03/01/06

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	1	Mercadante 122	1	Mercadante 124
	2	buy much from them. We started selling that line	2	Q Why not? Why would you pay Mr. Sheehan
	3	in June, July, something like that, of last year,	3	20 percent for doing nothing when you can go to a
	4	which was I guess, I don't really know the SPF	4	distributor?
	5	market all that much, but I guess it's after the	5	A Isn't that the basis of why we're all
	6	season. So we didn't sell much of it.	6	sitting here?
	7	Q When is the last time you made an order	7	Q I don't think that answered my question.
	8	from Plaza Sports	8	Why would you pay Mr. Sheehan 20 percent
	9	A I don't remember.	9	
	10		10	for essentially just being your orderer to get the products?
	11		11	A Because if I buy it from a distributor,
		•	12	•
	12	Q Was it before the subpoenas were issued		then I would presume that would include me under
	13	to Plaza Sports?	13	these contracts that we are right now not bound
	14	A Yes.	14	by.
	15	Q Did you get a call from Plaza Sports	15	Q So you can use Mr. Sheehan or any
	16	about the subpoena?	16	tanning salon as a shield, if you will, to
	17	A No.	17	A We're not using anybody. These tanning
	18	Q Did they ever contact you about the	18	salons want to do it. These tanning salons are
	19	subpoena?	19	selling more lotion when they sell it to us than
	20	A I never contacted	20	they ever would.
	21	Q When I say you, I want to be clear, you	21	Q But you're aware of Australian Gold's
	22	or S&L Vitamins or Larry.	22	contracts with the distributors that say you
	23	A As far as I know, no. No, as far as I	23	can't sell to people who sell on the Internet?
	24	know.	24	A As I said before, I was aware of that
	25	Q Has anyone refused to do business with	25	when I received the first cease and desist letter
	1	Mercadante 123	1	Mercadante 125
	1		1 2	Mercadante 125 in 2004.
	2	S&L Vitamins because of the subpoenas that our	3	
		law firm or Mr. Earley's law firm sent out?	1	When we informed Australian Gold or its
	4	A Danny wasn't crazy about it.	4	law firm exactly how we were getting the
	5	Q Has Mr. Sheehan refused to do business	5	products, they said we were doing nothing wrong
	6	with you?	6	and left us alone. Why would we change?
	7	A No.	7	Q Who at Australian Gold said you were
	8	Q In fact, he's lowered his price or his	8	doing nothing wrong?
	9	cost to you?	9	A I didn't hear it personally.
	10	A Oh, he has to. He didn't do that on his	10	Q Would that have been through your
	11	own will.	11	counsel?
	12	Q So how has your business been crippled?	12	A It was through counsel.
	13	A We can't expand. We can't try to find	13	Q Were you ever shown a document or a
	14	other suppliers at this point.	14	piece of paper from Australian Gold or its
	15	Q Why not?	15	attorneys that said you're doing nothing wrong,
	16	A Or we will not try to find other	16	you can continue to buy from these tanning salons
	17	suppliers.	17	and we'll leave you alone?
	18	Q Why would you want to find other	18	A No.
	19	suppliers if Mr. Sheehan is selling you products?	19	Q So when you say Australian Gold said

32 (Pages 122 to 125)

you're doing nothing wrong, that was just your

apparently took place between you and your

letters from counsel stopped after that point.

understanding you got from communications that

A Also the threats and the back and forth

One Penn Plaza, NYC

Never put all your eggs in one basket.

but for this lawsuit, you would attempt to just

A I would never purchase them directly

purchase them directly from a distributor?

from a distributor. I never had.

So are you implying by that answer that

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attorney?

	Steven Me	ercad	lante 03/01/06
	Mercadante 126	1	Mercadante 128
1		2	check or credit card?
2	So I did believe it, of course.	3	A No cash, no cashier's check, no credit
3	Q How much business have you done with		card from us. From what I understand what you
4	Mr. Sheehan over the years?	4 5	had asked me was, you said has anybody other than
5	A I'm not really sure.		S&L Vitamins paid Danny that way. I don't know.
6	Q Have you kept track of that in any way?	6	
7	A No.	7	Q No. What I'm talking about, for products for which S&L Vitamins has received from
8	Q Is there anything written down saying	8	
9	we've purchased a \$100,000, \$200,000 worth of	9	Mr. Sheehan?
10	products from Mr. Sheehan?	10	A Okay.
11	A I have no clue. The only way I could	11	Q Has anyone other than S&L Vitamins paid Mr. Sheehan or his business?
12	find that out is going through the checks and	12	u de la companya de
13	adding them all up. I don't know maybe you guys	13	A No.
14	have done that already. I know you have most of	14	MR. COLEMAN: Can we go off the record?
15	the checks.	15	(A recess was taken.)
16	Q Has Mr. Sheehan been paid by any other	16	Q Have you ever been to 15 East Deer Park
17	party other than S&L Vitamins?	17	Road in Dix Hills, New York?
18	A How do you mean?	18	A What's at 15 East Deer Park Road?
19	Q Has Steve Mercadante or Larry Sagarin	19	Q I have that as an address for Body
20	personally wrote him a check or have	20	Source Limited?
21	A No. It was all company checks.	21	A What was the city?
22	Q All company checks?	22	Q Dix Hills.
23	A Yes.	23	A That's the original Body Source that we
24	MR. COLEMAN: I just want to remind you	24	spoke about earlier. I was incorrect by saying
25	again to please really make sure that Scott	25	Northport, sorry.
	Mercadante 127	1	Mercadante 129
1 2		2	O That's the retail location that
2	has a chance to finish his question before	3	Mr. Sagarin started in '97 or so?
3	you answer.	4	A No. I believe it was certainly earlier
4	THE WITNESS: I apologize. MR. MATTHEWS: Thanks.	5	than that. I don't know the date that that
5		6	opened up, but it's gone now.
6	Q Has Larry Sagarin's company or any other company written checks to Mr. Sheehan or Yucatan	7	Q You had mentioned something about being
7		8	on the Jericho Turnpike; is that the same?
8	for products? A I don't know.	9	A That's the one, yes.
9		10	Q That's the same?
10		11	A Yes. I apologize.
11	sales? A Right.	12	Q Does Body Source Limited refresh your
13		13	memory as to whether that was the name of
14	Q Why don't you know? A I don't know who Danny receives checks	14	Sagarin's company?
15	from otherwise. I know that when Danny orders	15	A It could be.
16	products for us, we pay him with a company check.	16	
- 1		17	Vitamins, Inc. and Body Source Limited?
17		18	
18	A Outside of that, I have no idea who gives him checks.	19	_
19		20	
20	Q I'm not talking about his other	21	
21	businesses. I'm talking about for sales that	27	

24

22 have transpired through S&L Vitamins, two

23 websites that you've identified, if anybody else

other than S&L Vitamins has written him a check

or paid him money, whether it be cash, cashier's

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Q

Please do that.

Danny -- I'm sorry.

The names under which you're doing

business, the d/b/a's, assumed business names?

	,
	the state of the s

1	Mercadante 130	1	Mercadante 132
2	A Well, S&L Vitamins is the corporate	2	these pills for you, other than the diet and
3	name. Body Source, the websites are	3	sexual enhancer pills?
4	BODYSOURCEONLINE.COM, THESUPPLENET.COM. We also	4	A No.
5	have DRILLSANDTAPS.COM. And I'm sorry, Source	5	Q What's the name of your contact person
6	Pharmaceuticals as well.	6	there?
7	Q What is the Source Pharmaceuticals?	7	A Laurie. She just got married. I think
8	A We bottle two different dietary	8	her name is Brooks.
9	supplements that are labeled under that name.	9	Q Does Source Pharmaceuticals do any other
10	Q When you say they're labeled under that	10	business other than selling the diet pills and
11	name, what do you mean? What kind of supplements	11	sexual enhancer pills?
12	are they?	12	A No, sir.
13	A One is a diet pill and one is a sexual	13	Q From what outlets does Source
14	enhancer.	14	Pharmaceuticals sell these products?
15	Q So you put your only label on it and	15	A The Appedrene is sold through our store
16	sell it to the general public?	16	and through our website as well. The Impulse is
17	A Correct.	17	the same. We also do have a sports nutrition
18	Q What's the brand name of these products?	18	distributor that sells it for us, as well.
19	A Well, we have it made from a nutritional	19	Q Who is that distributor?
20	5 ,	20	A Europa Sports.
21	from them, through their labs, through their	21	Q Where are they located?
22	· ·	22	A They have a couple of locations. Their
23	Q What's the label, that's what I'm trying	23	main warehouse is in North Carolina.
24	to find out, what does your label say on the diet	24	Q Is that a national distributor?
25	pills and the sexual enhancer pills, what's the	25	A Yes.
1	. Mercadante 131	1	Mercadante 133
2	name of the products?	2	Q Who is your contact at Europa?

1	Mercadante 131
2	name of the products?
3	A One is named Impulse RX, that's the
4	sexual enhancer. And the other is Appedrene.
5	That's the weight loss supplement.
6	Q Does it say Source Pharmaceuticals on
7	the label anywhere?
8	A Yes.
9	Q What's the name of the company that
10	manufactures those pills for you?
11	A Nature's we haven't done it in so
12	long, Nature's Herbs. No, I'm sorry, Nature's
13	I can't remember.
14	Q If you can't remember, you can't
15	remember.

A Nature's something.

Q Are they're in Long Island?

A They're on Long Island, yes.

Q Is that their primary basis, to

-- pills and things like that?

Q Do you have any other business

relationship with the company that manufactures

1	Mercadante 133
2	Q Who is your contact at Europa?
3	A Eric Allred.
4	Q A-L-L-R-E-D?
5	A I believe it's two Ls, yes.
6	Q Why do you use the name Body Source, why
7	not just sell it under the S&L Vitamins name? Is
8	there a reason why you decided to use that name?
9	I'm sorry, Source Pharmaceuticals, I'm sorry.
10	A Just to kind of keep it tied in with
11	Body Source, but also separated.
12	Q Source Pharmaceuticals is not a separate
13	company?
14	A No.
15	Q Does Source Pharmaceuticals keep
16	separate records of its sales?
17	A No.
18	Q Does Source Pharmaceuticals generate
19	invoices for sales of products?
20	A We did, yes.
21	Q When did you have invoices for products?
22	A Europa Sports orders from us, few and
23	far between. I really wish it was more. But
24	it's been some time, so
25	The Appedrene, they don't carry. The

manufacture --

Α

Q

Α

Yes.

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1 Mercadante 134 1	
2 Appedrene is sold only through us, through our 3 store. So 4 Q But I mean, if a sale is made, let's say 5 on your Internet website for the Appedrene, does 6 somehow it get credited in the ledger column for 7 Source Pharmaceuticals as opposed to S&L Vitamins 8 or is that all 9 A It's all one corporation. It's just a 10 separate d/b/a. 11 Q Do you use Source Pharmaceuticals for 2 Q D- 3 A Th 4 Q W 5 A Dr 6 produced 7 from the 8 then we f 9 ships it for 10 Q So	o you're still selling it, but you /e any inventory
the sexual enhancer pills? A No. We have used the invoicing software before, but that's it. Q What do you mean invoicing, do you have a special software for Source that's not set up R for A Well, we did have an invoicing software os othat when Europa places an order, we can generate an invoice for them. Q Do they require an invoice? A No. Q Do you generate invoices generally? If	don't touch Drills. et me see if I understand this. Your offers all these Drills and Taps for ight. customer can go on the website and e a drill? es. You receive the order? Forrect. and is that the same computer system and all come to the same place as S&L e tanning lotion orders? Fes.
3 a warehold 4 Q What does the invoice say on that? If 4 customes I'm John Q. customer, what does my invoice show? 5 A T 6 A Top left would have your reference 7 number, your order number. Below that, it would 8 say order to Supple Net, dash, again, your order 9 number. 9 Drills and 10 Below that it would have the ship to, 11 the bill to, method of payment and the products 11 half. 12 you ordered with pricing. 12 Q V 13 Q Is your company's name on the invoice at 13 Taps? T 14 anyplace? 15 A The website address is, yes. 16 Q Does it say Body Source or does it say 16 to purch 17 S&L Vitamins on the invoice? 17 different 18 used to 19 Q Is Drills and Taps S&L Vitamins' 19 good price as 19 price as	That's right. You purchase the product? And then the warehouse bills us. How long have you been operating the d Taps website? ust over a year. Maybe a year and a What sparked the interest in Drills and That's an odd combination with dietary ments and tanning lotions? It was another contact that we were able hase a product, albeit a completely type of a product than what we were selling. We were able to buy it at a ice and offer it to the customer at a good

Q But other than that, you don't have to

AOL purposes.

24

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THE WITNESS: It's all one word for the

24

25

website.

140 Mercadante Mercadante 138 1 1 2 shell out any cash for inventory or anything like 2 the top right that you're speaking of are points 3 that we don't know how to do. 3 that? Q So when this website was designed, is it 4 4 No. No. Α your testimony that it was designed to be 5 5 All right. So Drills and Taps is part of S&L Vitamins and your percentage of ownership operated by Larry Sagarin and his father at this 6 7 204a North Fehr Way address? is -- or the percentage ownership of, I guess, 7 8 A That's right. that business would be 50 percent you and 50 8 percent Laura Fanning? 9 Instead, Larry brought this business 9 opportunity to S&L Vitamins and this is another A That's right. 10 10 component of S&L today? Does Larry Sagarin have an interest in 11 11 A That's right. that business? 12 12 Is there any other aspect of S&L A Just the same as he does with 13 13 Vitamins' business that we haven't talked about THESUPPLENET.COM. It also comes into the same, 14 15 other than the Internet websites, there's three, for the same general purpose. He does have more 15 of the knowledge with Drills and Taps than 16 correct? 16 17 Α Three websites, yes. 17 anybody else. 18 Did you have any other websites? 18 MR, MATTHEWS: Mark this as Exhibit 6. 19 (Mercadante Exhibit 6, printout of the 19 A Well, we did have an website for IMPULSERX.COM, but that's been gone. Drills and Taps website, marked for 20 20 identification, as of this date.) Q Is there any other product line that you 21 21 Q I've handed you what's been marked as 22 sell that we haven't just at least touched upon 22 23 today in some way? deposition Exhibit 6. Is this a printout of the 23 Drills and Taps website? 24 Α No. 24 25 The phone number, (631) 225-2639, is 25 A It is. Q 141 1 Mercadante 139 Mercadante O At the top right-hand corner it gives an 2 that S&L Vitamins' phone? 2 3 That is our phone number. address of 204a North Fehr Way, Bay Shore, New 3 4 Why did you use that phone number? 4 York 11706. Q 5 A That's correct. 5 Α I'm sorry. 6 6 What's located at that address? That's okay. 7 MR. MATTHEWS: Off the record. 7 That's actually Larry's father's 8 8 business. He's in the tool business. Originally (A discussion was held off the record.) 9 MR. MATTHEWS: Read it back. 9 when Drills and Taps came about, it was supposed (The requested portion was read back.) 10 to be a partnership between him and his father. 10 A That's our phone number. I wouldn't use Where his father -- I don't know exactly 11 11 what happened there, but Larry asked me to help 12 your phone number. 12 him with it instead of his father. Q But your testimony was that you were 13 13 14 going to -- Larry and his father were going to go In the meantime, changing of the address 14 is an HTML situation that we don't know how to 15 into this business? 15 change. And that's -- just didn't get around to Riaht. 16 16 And they didn't, and you said that is 17 changing it. 17 the reason why the wrong address is there because 18 Q Well look at the address at the bottom 18 you couldn't change it? of the page, isn't that the same as updating or 19 19 20 That's right. amending a web page? Α 20 Q So wouldn't you have used -- let me 21 No. 21 finish my question, wouldn't you have used 22 It's not, why not? 22 Q 23 Larry's father's business phone number? That's a separate part as for a Yahoo 23 store, particular parts of the pages need an HTML A Originally, it was there. We had 24 24

contacted Desktop Solutions to change that for

code to edit and that spot there and the spot on

Steven Merc			lante 03/01/06
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Mercadante 142 us. It was an oversight that they didn't change the address. To be completely honest, it's just not worth the hassle or the cost to have them go over and change the address. Q What does it cost to change the address? A Probably a couple of hundred bucks, hourly fee. It's not that important. Q With respect to modification of websites, what are you and Mr. Sagarin able to do and what do you have to call Desktop Solutions to perform? A Anything that goes along with the actual scheme of the look of the page, including borders, any text on borders, any images on borders, anything that's listed at the bottom of each page or anywhere on each page is all HTML code. Content, such as the text that's written in the middle, we can do that. Categories, we can do that. Items and other subcategories within those categories, we can do. Q So if you wanted to, under the drill category, if you wanted to add a new drill, you could go in and add that or remove one?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Mercadante 144 time. A Sort of. I guess from here up, he is. From here down, he's not. Danny has been into weightlifting, extensive weightlifting, not body building for competition, for quite some time. Q How were you first introduced to Mr. Sheehan? A Through Larry. Q Was that in a business context of supplying his tanning salon with supplements or was it a social meeting? A No. It was actually a business conversation as far as him supplying us with tanning lotions. Q That was your first introduction? A Yes. Q You said you were actually supplying him supplements first MR. MATTHEWS: Listen to the whole question. THE WITNESS: I know. Q You said that you actually were supplying, S&L Vitamins was supplying Mr. Sheehan with supplements first before he ever provided
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Mercadante 143 A Right, yes. Q Let me make sure I got my list right. S&L Vitamins Corp. Inc., it does business as Source Pharmaceuticals; it does business as THESUPPLENET.COM; you do business as BODYSOURCEONLINE.COM; you also do business at DRILLSANDTAPS.COM. Is there any other name under which S&L Vitamins does business that I failed to mention? A No. Q Do you have another source lined up for your outdoor SPF products that you were obtaining from Plaza Sports? A Not as of yet, but we plan to be trying.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Mercadante 145 tanning lotions? A That's correct. Q Before you decided to start selling tanning lotions on the Internet, did you do any type of research into tanning lotions in general? A No. Q Did you do any research about selling tanning lotions online? A No. Q Did anybody in your company do any research about tanning lotions or selling tanning lotions online prior to S&L Vitamins selling them? A What type of research talking to people

- Q So you intend to carry that going 16

forward? 17

- 18 A Yes. 19
 - How long have you known Danny Sheehan?
- A Late 2003, early 2004. I knew of him 20
- 21 before that, but --
- Q I forgot we talked about this this 22
- morning; is he a body builder, too? 23
- A Are you going to see him personally? 24
- 25 Q I am going to see him at some point in

Q Any kind of research, talking to people, 16 reading articles, getting on the Internet, 17

18 looking at websites?

A Any time we post any new product, we 19 always do search around just to get a feel for 20 competitive prices to see if we can compete. If 21 22 we can't compete, if we can't offer our customers

a better price, then we don't do it. 23 24 Q Prior to agreeing to trade your

supplements for tanning lotions with Mr. Sheehan,

37 (Pages 142 to 145)

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1 2 3 4 5 6 7 8 9 10	Mercadante 146 did you do any research on the Internet, look at pricing and see whether or not you could turn a profit? A Prior to that? Q Yes. A No. Q So if I remember right, Mr. Sagarin just came back with tanning lotions and said, here we are? A I had the same look that you do.	1 2 3 4 5 6 7 8 9 10	Mercadante 148 supplements because at that point we had no interest in the tanning lotions. He's the one that had the interest in supplements. When he ran into a tough time, he gave us the lotions. And then from that point forward, I think we began buying from him more tanning lotion than he was buying supplements from us. Q So there would be some cash plus maybe product going to Mr. Sheehan in return for
12 13	MR. MATTHEWS: Let the record reflect two very handsome	12 13	tanning lotions? A Checks plus product, yes.
14	Q Once you received the tanning lotion and	14	Q Checks, yes. Did that ever change to
15	you're stuck with them and you have to sell them,	15	where it became to just you writing him a check
16	what did do you as far as investigating how am I	16	for lotions and Mr. Sheehan not buying any of the
17	going to sell these? Did you go to websites?	17	product you sold?
18	Did you call tanning salons? What did you do?	18	A More often than not.
19	A No. We asked, again, you know, what do	19	Q So after the initial transaction between
20	these things cost? What do they sell for so that	20	you and Mr. Sheehan's company, then the pricing
21	we knew what price to offer it at. And then that	21	was established that you will get the lotions at
22	was it.	22	20 percent for Australian Gold products or 10
23	Q What did he tell you? Did he give you a	23	percent for other manufacturer's products over
24	list as a retail price in salons, if you go to	24	cost?
25	Internet, you can buy it cheaper, what kind of	25	A Correct.
1	Mercadante 147	1	Mercadante 149

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1	Mercadante 147
2	advice on pricing did he give you?
3	A It was a minimal amount of differ

A It was a minimal amount of different items, so it was just this product costs this much, this product costs that much.

Q Did he give you any kind of proof of what he actually paid for it, so that you know what kind of actual value you were getting on that initial order?

Not to me. Α

After that initial trade of products, which remind me again, what month and year that approximately occurred in?

The initial trade with Danny?

Q Yes.

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16 Was late 2003.

> Were there additional trades product for product or did you start buying, just taking cash and buying tanning lotions from Mr. Sheehan?

A We never took cash or gave cash. Again, everything was all company checks.

Q I didn't mean cash, I meant instead of trading goods for goods, after that initial swap of goods, did you begin purchasing products?

A Originally, Danny would pay us for the

2 Q You testified earlier that the company 3 purchased a van to pick up products. How many 4 product pickups in a week occur?

It depends on the season.

Let's do when it's in the tanning Q season?

I don't really know. I don't know.

Q Well, was it weekly, it was more than 9 10 once a week?

Well, we generally try to do weekly orders for what we need for the week. So outside of that, I couldn't tell you anymore.

Q So at least once a week, you would go and pick up product?

Sometimes two, sometimes three.

Q Were the orders large enough that you 17 were required to have a van to fit them? Would 18 19 they fit in a car?

A Well, you've seen the size of the Honda 20 21 and the size of a Lexus IS, so some of those stock orders for the week, yes. 22

Q But I mean, the van was bought to be 23 able to accommodate larger orders? 24 25

A Yes.

Mercadante 150 Q How often do you place orders with Mr. Sheehan? And Tim talking from the beginning to today, and if it's changed, just tell me it's changed. A Tim sure it has changed, But til me it's changed it's been a little bit more consistent. Sometimes once a week. Sometimes every other. There have been times where it's two or 11 three times a week. To completely varies. We don't overstock. We don't try to build inventory 30 somuch. We order what we need. Q Your attorneys in this lawsuit have 150 identified three suppliers, Plaza Sports, Danny Sheehan and John - well, Danny Sheehan and I 17 think it's John Tufarella? A That's correct. Q My understanding was there really wasn't - maybe a different location, but it was the same business; is that true? A A ta time, I'm not sure now, there were Mercadante 151 A To more the same business; is that true? A A ta time, I'm not sure now, there were Mercadante 151 C When were you first introduced to Mr. Tufarella? A That's been a little bit more consistent. Q What were the circumstances of tanning lotions you made, right? A Yes. Q And Mr. Sagarin introduced you to 14 Mr. Tufarella? A Yes. Q What were the circumstances of that 17 introduction? A Here's his phone number, if you need 18 something, call him. Q Well, to go to a movie? I mean, for 20 Mr. Tufarella? A Howe were different volutions and different volucation. Mercadante 151 A To more? A A ta time, I'm not sure now, there were Mercadante 152 M That's been a little bit more consistent. Q My understanding was there really wasn't - maybe a different volucation. A That's correct. Q My understanding was there really wasn't - maybe a different volucation. A That's correct. Q My understanding was there really wasn't - maybe a different volucation. A To more? A Here's his phone number, if you need 19 something, call him. Q Did Mr. Tufarella? A Here's his phone number, if you need 19 something lotions, call him. Q Did Mr. Tufarella on a professional level? A Hore were the travelly acked and of a maybe a different		- · · · · · · · · · · · · · · · · · · ·		
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24 A Through Larry. 24 Q And neither one of them fought for your		- · · · ·		
l	1			
25 Q Was he also an acquaintance of Larry 25 business to give you a better right?		. — · · · · · · · · · · · · · · · · · ·		•
	25	Q was ne also an acquaintance of Larry	25	business to give you a better right?

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Steven Me	ercad	dante 03/01/06
Mercadante 154 A Sure. John would kind of come back every once in awhile and say, hey, listen, I'll do 15 percent on this one or I'll do 10 percent on this one. Q So it's advantageous for S&L Vitamins to use both of them because you might get a better deal if you A Not only because we can get a better deal. We never liked buying from one source whether it comes from sports nutrition products or tanning lotion. We just don't to that. Q Why not from a business standpoint? A Because we feel that the business we buy from can kind of strong-arm us, and say, if they're not going to buy from anybody else, I'll raise their price. Q So this gives you leverage? A It gives us good leverage and it also give us better relationships across the board, throughout the industry. Q How did your transactions work with Mr. Tufarella as far as placing the order, from placing the order all the way through picking up	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Mercadante 156 A Cash. I'm sorry, check. Everybody was all check. Q S&L Vitamins' check? A Yes. Q Where would Mr. Tufarella deliver the products when he delivered the products to you? A When he delivered it to us, he delivered to our location at 308 East Montauk Highway. Q Did he ever deliver it to any other location? A Sometimes he brought it home and I actually picked it up at his house. This was back when I was at the address I told you about in Hauppauge. He lived in Hauppauge also. Q Did you guys ever meet at neutral locations or halfway in between to deliver the products? A Not that I can remember. Q Were there any certain types of Australian Gold, Swedish Beauty or Caribbean Gold products that you would not order from Mr. Tufarella? A No. Q So the same type of orders you placed
Mercadante 155 A Again, phone call, phone it into him. Usually, John after he received the order, usually would deliver it to us. Q Did he generate an invoice of products that he was selling to you? A No. He didn't generate an invoice. Q Did he show you his invoice from the	1 2 3 4 5 6 7 8	Mercadante 157 with Mr. Sheehan, you placed with Mr. Tufarella? A Yes. Q What about orders placed in Midnight Sun, that was the other supplier identified by you in this lawsuit, how did those orders work? A Those were faxed to Dominic. Q What did you fax to him?
	Mercadante 154 A Sure. John would kind of come back every once in awhile and say, hey, listen, I'll do 15 percent on this one or I'll do 10 percent on this one. Q So it's advantageous for S&L Vitamins to use both of them because you might get a better deal if you A Not only because we can get a better deal. We never liked buying from one source whether it comes from sports nutrition products or tanning lotion. We just don't to that. Q Why not from a business standpoint? A Because we feel that the business we buy from can kind of strong-arm us, and say, if they're not going to buy from anybody else, I'll raise their price. Q So this gives you leverage? A It gives us good leverage and it also give us better relationships across the board, throughout the industry. Q How did your transactions work with Mr. Tufarella as far as placing the order, from placing the order all the way through picking up the product? Mercadante 155 A Again, phone call, phone it into him. Usually, John after he received the order, usually would deliver it to us. Q Did he generate an invoice of products that he was selling to you? A No. He didn't generate an invoice.	A Sure. John would kind of come back every once in awhile and say, hey, listen, I'll do 15 percent on this one or I'll do 10 percent on this one. Q So it's advantageous for S&L Vitamins to use both of them because you might get a better deal if you A Not only because we can get a better deal. We never liked buying from one source whether it comes from sports nutrition products or tanning lotion. We just don't to that. Q Why not from a business standpoint? A Because we feel that the business we buy from can kind of strong-arm us, and say, if they're not going to buy from anybody else, I'll raise their price. Q So this gives you leverage? A It gives us good leverage and it also give us better relationships across the board, throughout the industry. Q How did your transactions work with Mr. Tufarella as far as placing the order, from placing the order all the way through picking up the product? Mercadante 155 A Again, phone call, phone it into him. Usually, John after he received the order, usually would deliver it to us. Q Did he generate an invoice of products that he was selling to you? A No. He didn't generate an invoice.

- distributor, so you could determine whether or not you were paying the correct amount to him as far as his markup?
- A I believe so. Originally, I don't think 12 that I was paying him originally. Originally, 13 I'm not really sure if he was showing us the 14 15 invoice or not. I wasn't paying him, I don't think. 16
- Q At some point in time, did he show you 17 the invoices? 18
- A Yes. 19

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- He did? 20 Q
- 21 Α Yes.
- 22 Were you or S&L Vitamins identified on
- those invoices in any way? 23
- 24 Α No.
- 25 How was Mr. Tufarella paid?

- A We would print out the pages from our 10 website, the item pages from our website and put numbers next to the items of the quantities that 11 we needed and faxed it over. 12
 - Q Then what happened next as far as getting the order?
 - A 2 or 3 days later, Larry would get a phone call, the stuff was in. Dominic was a little bit different with payment as far as we saw the invoice there. He gets 20 percent on everything, saw the total, times it by 1.2, write a check right there and go.
 - No paperwork back to you, no receipt? Q
 - Α No.
- 23 Did you order any of the Australian Gold, Swedish Beauty or Caribbean Gold product 24
- 25 with Dominic Bartone?

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03/01/06

Steven Mercadante

1	Mercadante 158	1	Mercadante 160
2	A Yes.	2	the discovery of possibly relevant evidence?
3	Q How were you introduced to Dominic	3	MR. MATTHEWS: Sure. If he has other
4	Bartone?	4	sources where he's buying other tanning
5	A Never met him a day in my life.	5	lotions, I have a right to confirm that he's
6	Q Did you place any orders with	6	only buying other tanning lotion says and not
7	Mr. Bartone?	7	Australian Gold.
8	A I faxed orders to him.	8	For example, if he's buying from a
9	Q Why did you do it by fax, why not by	9	distributor who sells 20 different lotions, I
10	telephone?	10	have a right to know that so I can call that
11	A That was the easiest way.	11	distributor and say, is Mr. Mercadante only
12	Q You've identified four different	12	buying these lotions and not Australian Gold?
13	suppliers. Can you break down for me the	13	MR. COLEMAN: It's an answer.
14	percentage of the business with each of those	14	Q And your question was just tell me
15	suppliers where you bought most of it, and just	15	the manufactures you buy directly from.
16	kind of rank them 1 through 4?	16	A Millennium, Radiance, Hot Sauce,
17	A I can't. What I can tell you is, Danny	17	Ultimate. I'm trying to think.
18	is the person that I use most often. John, at	18	Q Do you buy from any distributors,
19	one point, John we used more often than Danny	19	independent distributors, who may sell many
20	because sometimes he would fight for a discount	20	manufacturer's lotions?
21	and he would deliver it. But Danny is the guy	21	A No.
22	that I speak to mostly.	22	Q No business relationships with any
23	Q So it would be Danny, John and then	23	independent distributors, if you will?
24	Dominic Bartone of Midnight Sun?	24	A For tanning lotions, no.
25	A Correct.	25	Q What percentage of the markup do you put
1	Mercadante 159	1	Mercadante 161
2	Q And the last would be Plaza Sports?	2	on your products?
3	A Plaza.	3	A Well, that varies. Basically, we
4	Q Has S&L Vitamins ever bought products	4	determine selling price based on competitors. It
5	from any other person or entity other than the	5	certainly varies between supplements and tanning
6	four entities we've just discussed?	6	lotions tremendously.
7	A Australian Gold products?	7	I would say the average margin, I would
8	Q Yes.	8	imagine, is about maybe 30 percent on the
9	A No.	9	lotions, 25 to 30 percent.
10	Q Swedish Beauty products, the same	10	Q How do you figure that? You're saying
11	question?	11	you market it at 25 to 30 percent over what your
12	A No.	12	supplier sells it to you?
13	Q And Caribbean Gold, same question?	13	A We make about a 25 to 30 percent margin,
14	A No.	14	yes.
15	Q Have you bought any other tanning	15	Q So you're saying gross profit?
16	lotions from any other entity other than these	16	A Gross profit margin, yes.
17	four?	17	Q How does that vary from the supplements?
18	A Yes.	18	A 10 to 15 percent.
19	Q Who are those?	19	Q So tanning lotions are more profitable?
20	A We do buy some of the lotions direct.	20	A Yes, they are.
21	Q From the distributor or	21	Q Are you still ordering from
22	A From the manufacturer, some people do	22	Mr. Tufarella?
23	like their stuff being sold on the Internet.	23	A Not in awhile, no.
24	MR. COLEMAN: Chris, I'm going to ask	24	Q Is that by your choice or has he refused
25	you how this line of questioning will lead to	25	to deal with you?
			•
			41 (Pages 158 to 161)

164 162 Mercadante Mercadante 1 1 2 No. Neither. He's willing to accept 2 Α That I don't remember. I don't orders. His salon has closed down, but his 3 remember. 3 distributors had told him that they would still Q Did you put the retail price on there or 4 4 5 did Mr. Sagarin? 5 ship to his house. A I don't remember. It's 2004. I don't 6 MR. COLEMAN: Let's take a break. 6 7 7 (A recess was taken.) know. MR. MATTHEWS: Mark this as Exhibit 7. 8 Q With respect to today's website, where 8 9 (Mercadante Exhibit 7, printout, marked 9 do you get the retail price? A From catalogs. for identification, as of this date.) 10 10 Q Mr. Mercadante, I'm going to hand you Distributor catalogs or Australian Gold 11 11 Q what's been marked as Exhibit 7. I'll represent 12 catalogs? 12 A We have a catalog that Danny would give to you that this is a printout of a portion of 13 13 to us wherever he gets them from and that's where THESUPPLENET.COM website on April 19, 2004. 14 14 we get our new prices from. Does that look like your website? 15 15 16 Did he ever give you a CD with images on 16 At that point, yes. 17 it of products? 17 Q I want to ask you a couple of questions about this. Again, you got up there, two New A No. 18 18 19 York locations on the top right-hand corner? 19 Where did you get the pictures that are depicted here in Exhibit 7? 20 Yes. 20 21 A We take our own pictures. Did you ever consider the fact that if 21 Q someone's closer to Miller Place than 22 Q These products, that's true at all 22 times, Mr. Mercadante? Lindenhurst, that your website, S&L Vitamins, 23 23 24 Supplements, no. Other lotion lines, might actually be diverting business away from 24 no. Certain lotion lines, it's true every time. 25 S&L Vitamins to a competitor, although a business 25 1 Mercadante 163 1 Mercadante 165 2 partner, it would be sales that you would not 2 Q If you look down at Bronzing Fire Glaze, 3 the picture is small, but I'll represent to you 3 receive credit for? that there's a picture of a box in a bottle. A I think you said the magic word, it's 4 4 5 business partner and I want the best for him at 5 It's on the first page. 6 his location, as well. Α 6 7 I believe or it's my client's belief 7 I'm happy with the way that our business 8 8 is going and if this can help to generate that that's their picture. Are you disputing 9 something to their storefront over there, then 9 that? 10 that's great. Sure. 10 Α Do you still have copies of those 11 O The phone number listed over there, 11 0 (631) 225-BODY, where does that ring? 12 photographs that you've taken back from 2004? 12 13 A That's our number at Lindenhurst. 13 A No. 14 Q Who would have taken the photographs of Q Does Miller Place have the same phone 14 number? 15 this picture? 15 We have photographers do it. 16 16 Α Who would the photographer have been 17 O Let's look at the products. These are 17 18 that took this in 2004? 18 Australian Gold products, correct? A I family member of Larry is a Yes. 19 19 photographer, so --The first one says, well, let's go down 20 20 to Blazin', it says, Intense Formula With Tingle Q What's that person's name? 21 21 Bronzer Hemp. Where did you get the product 22 A I'm not sure actually. He takes it to 22 23 wherever, it gets e-mail to us and we plug it in. 23 descriptions? Q So he e-mails the pictures back via your 24 A Off the bottle. 24

Q Where did you get the retail price?

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computer?

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1		Mercadante	166	
2	Α	Correct.		
3	Q	You're saying you've o	leleted these	
4	pictur	es since this time?		
5	Α	Sure.		
6	Q	Why?		
7	Α	No sense in saving the	e-mail of the	
Q	nictur	e when it's already on t	he wehsite	

- picture when it's already on the website. Q At this time, April 2004 in Exhibit 7,
- 10 you weren't putting the BODYSOURCEONLINE logo or name across a product, correct? 11
- A Correct. 12

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- Q Were you altering the products in any way as far as their appearance, the pictures by adding anything to them?
- A I don't understand what you mean. 16
- 17 Q Your testimony is, you took a photograph of the bottle and placed it on the Internet? 18
- 19 Right.
 - Did you manipulate that photograph in any other way?
- A Well, I didn't take the picture myself, 22 it was a photographer. However, they do it to 23 make it a clearer picture, to make it look nicer, 24
- whatever photo softwares they use, I don't know. 25

Mercadante 168 picture for Australian Gold was a picture taken 2

- by you or someone hired by you? 4
 - A Correct.
 - Turn to the last page, 3 of 3. Q
- 6 Α Okay.
 - Q Do you see the SPF 8, 15 and 30 products?
 - Α
 - 0 Why did you take pictures of these bottles in that?
 - A Originally, we had them listed as just SPF. And then when you go on to the item page before you place the order, there's a dropdown as to whether you can choose SPF 8 as an option, 15 as an option or 30 as an option.

So that originally was one item, but then we realized the price change with the SPF 30, we broke it up into pieces, but we never had a new picture taken.

- Q So you're saying those three bottles represent an SPF 8, 15 and 30?
- 23 That's correct.
 - Q Do you know if any manipulation was done of the photograph to kind of white out the area

1 Mercadante 167 Q Look back at Blazin' again. 2 3 Α

- Q There looks to be some text superimposed 4 5 right across the -- right above the bottle cap.
- 6 Do you see that?
- 7 A Yes.
- 8 Q What's that say?
- 9 A I don't know.
- 10 Q Could that say new?
- A It could. 11
- 12 Q But it's your testimony that whatever it
- 13 says there, you guys created it, you didn't take
- this from something that Australian Gold had?
- 15 A Never took a picture from Australian
- 16 Gold.
- 17 Q Did you take it from a catalog? I'm not saying you took it directly from a website, but 18
- did you borrow a picture from a catalog? 19
- 20
- 21 Q Did you ever scan a picture onto the
- 22 system?
- 23 A No.
- 24 Q It's your testimony that at all times on
- 25 THESUPPLENET.COM and BODYSOURCEONLINE.COM every

169 Mercadante

2 behind these products?

> In other words, it looks like the products are almost sitting in space rather than sitting on a table or, I guess, a backdrop; do you know if anything was done?

- A I really don't know. We had a professional photographer do it for a reason.
- 9 Q Would Mr. Sagarin know the name of the 10 professional photographer?
 - A Yes. It's his family member. I don't know who it was.

MR. MATTHEWS: Mark this as Exhibit 8. (Mercadante Exhibit 8, counterclaim,

marked for identification, as of this date.) O Mr. Mercadante, I put Exhibit 8 in front

- 16 17 of you and I'll also represent that this was Exhibit E in the counterclaim filed by Australian 18
- Gold. 19
- 20 Okay.
- 21 Q If you look at the right-hand side of
- the page, it says, sponsor results? 22
- 23 A Yes.
- 24 Q It says, buy discount tanning lotion 25
 - here, Australian Gold, Swedish Beauty, Designer

43 (Pages 166 to 169)

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1	Mercadante 170 Skin, Supre. And then it goes on, but below it	
	says, THESUPPLENET.COM is what I believe it	
4	continues to say?	
5	A I would believe that's what it says,	

yes.

- As of this time as of April 25, 2005, was your business paying to be a sponsored result on Yahoo for the Australian Gold?
- A Again, as I said before, I don't know. I didn't handle the sponsor things, I wouldn't know.
- Q Mr. Sagarin would be the person who 13 would know? 14
 - Yes.

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- Would there be any other person besides Mr. Sagarin who could possibly know what you did with respect to the pay-per-click advertising on Yahoo or anywhere else?
- A Not to my knowledge. I also see some other people selling Australian Gold on this page as well.
- Q Absolutely, in fact, there's one that's Australian Gold Coins Bullion, but I just want to 24 make sure that I don't get to the end of 25

1		Mercadante	172
2	produ	cts, the people who are	advertising that
3	partic	lar product actually par	y for that
4	placen	nent.	
5	· Q	If I sell Cadillacs, Cadi	llac

- Q If I sell Cadillacs, Cadillac automobiles online, you would pay with respect to the word Cadillac, if you wanted to be identified, have your website identified at the top of the search ranking?
- A If you were the one selling the Cadillac, I believe that's the way. That's the way some of them work, I think. Others are just spidering, too.
 - Q What's spidering?
- A I think that has to do with -- it's a 15 search engine that just branches out and finds 16 the information across the Internet. It has 17 nothing to do with paying or anything like that. 18
- Do you do that? 19 Q 20
 - Α No.
- 21 0 You don't have to pay to be part of 22 spiderina?
- A No. It's something that is done within 23 the website where the spider will pick it up and 24 I don't understand. 25

171 Mercadante 1 2 discovery and Mr. Sagarin says, Mr. Mr. Mercadante knows, so I just want to make sure 3 4 we're clear? 5

- Α AMAZON.COM, too.
- Q Look at the Australian Gold product here, it says Cheeky Brown, Australian Gold tanning lotion.

The text below that, the number 1 tanning lotion now with bronzer, get dark fast with Cheeky Brown advanced formula with natural bronzers. Who wrote that text?

- A I don't know. That says World Class 13 Nutrition underneath it. 14
 - Q So that is not your site?
- A That's not my site. That's the World 16 Class Nutrition I brought up to you earlier. 17
- Q Okay. Do you have an understanding of 18 what the pay per click or the sponsored result 19 service is? 20
- 21 Slight.
- Q What's your understanding of that 22 23 service?
- A On certain search engines or websites 24 where people go to find where to buy certain 25

- 173 Mercadante 1 Q Is that the medatags, the HTML source 2 3 code?
- 4 A I don't know. It's got something to do that's more advanced than Yahoo manager, so I 5 have no idea. 6
- 7 Q Have you given Desktop Solutions any instructions about securing placement or 8 advertising on the Internet with respect to 9 tanning lotions? 10
- A Again, I don't handle anything that has 11 to do with placements. Whether or not a 12 conversation like that has happened, I don't 13 14 know.
- Q Mr. Sagarin would be responsible for 15 Internet advertising and marketing issues? 16
 - Yes. Α
- No one else, to your knowledge? 18 0
- No. We're a three-man band. 19 Α
- Mr. Neirman, you and Mr. Sagarin? 20 Q
- 21
- 22 MR. MATTHEWS: Mark this as Exhibit 9. 23 (Mercadante Exhibit 9, complaint, marked
- 24 for identification, as of this date.) 25
 - Q I put Exhibit 9 in front of you and

44 (Pages 170 to 173)

Steven Me		ercac	dante 03/01/06
1	Mercadante 174	1	Mercadante 176
2	again this was Exhibit F to our complaint. This	2	this date.)
3	shows here and if you see in the search term, it	3	Q Exhibit 10 is in front of you now. I'll
4	shows, I've typed in Swedish Beauty. And then	4	represent that this is a website printout from
5	under sponsor results, would you agree with me	5	BODYSOURCEONLINE.COM or THESUPPLENET.COM as of
6	that THESUPPLENET.COM is the first listed	6	February 27, 2006.
7	website?	7	Does this look like a true and accurate
8	A On the right-hand side, you mean?	8	depiction of your website as of or around that
9	Q Yes.	9	date?
10	A Yes.	10	A Yes.
11	Q Is it your understanding that with a	11	Q If you flip through this, this is the
12	sponsored result, if you type in Swedish Beauty,	12	Australian Gold products. Are these all of the
13	if you pay enough money, at least in this as	13	Australian Gold products offered for sale by
14	of this date, your website is going to be the	14	THESUPPLENET.COM or S&L Vitamins, I guess to be
15	first result listed on the search?	15	more precise?
16	A I don't know necessarily if that's the	16	A I believe so.
17	case anymore because I know Yahoo, especially	17	Q Are there any products that you offer
18	Yahoo shopping has changed their whole way about	18	for sale that aren't on your website?
19	how they do these things.	19	A No.
20	It's not necessarily pay per click. It	20	Q And all the products that are displayed
21	is who is a Yahoo store. Who is a better	21	on your website are offered for sale by S&L
22	customer for Yahoo as far as where the placements	22	Vitamins?
23	are.	23	A Correct.
24	It has nothing do with, I'm paying X	24	Q I want to ask you about the pictures
25	amount of dollars or cents to be in number 1. It	25	here, but I'll give you a better exhibit in a
1	Mercadante 175	1	Mercadante 177
2	could be ratings. It could be anything, I think.	2	minute. Let me ask you one question on the
3	Q Are you familiar with a company	3	product.
4	OVERTURE.COM?	4	So I understand your pricing structure,
5	A Sure.	5	how you're buying it, how you're displaying it
6	Q What is OVERTURE.COM or what was it?	6	and your profit margin, let's take the Crystal
7	A It's another pay-per-click company.	7	product?
8	Q Do you have any relationship with	8	A Okay.
9	OVERTURE.COM, your business, S&L Vitamins?	9	Q Again, this says it has a retail price
10	A Yes. We've used them before.	10	of \$100.
11	Q Do you currently use OVERTURE.COM?	11	A Right.
12	A I'm not really sure. I know we're	12	Q And your price, on your website for \$55.
13	trying to cut back on a lot of it because it's	13	Based upon the percentages you gave me, can you
14	just too costly.	14	tell me what you would pay this for?
15	Q Did you ever bid or pay for placement	15	A Sure.
16	with respect to the term Australian Gold?	16	Q What your profit is?
17	A I have no idea, I don't handle that.	17	A Sure. If retail price is \$100, then
18	Q Mr. Sagarin again?	18	normal salon cost is \$50. I believe that's their
19	A Yes.	19	pricing structure. I know some distributors give
20	Q I assume you wouldn't know about Swedish	20	45 percent off salon costs, 45 percent off \$50.
21	Beauty either?	21	Q So wait. Some distributors sell to
22	A Right.	22	
23	MR. MATTHEWS: Mark this as Exhibit 10.	23	
24	(Mercadante Exhibit 10, website	24	
25	printout, marked for identification, as of	25	And then we take that \$27.30 and we pay Danny 20

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Steven Me	ercadante 03/01/06
Mercadante 178 percent, so we pay something like \$34 or something like that. And then all the tanning salons down the street are probably what should be paying the same as Danny and they're selling for \$100. So I don't know who's right and who's wrong. Q So you take \$27.50 times A Well, \$27.50 is 45 off of 50, right? Q But the price Mr. Sheehan or your other suppliers would sell A \$27.50 times 1.2. Q Which is \$33? A Right. Q And then you sell it for \$55, so you're making \$22 a bottle? A Okay. Q Does that sound right? A Yes. Q So that's a little bit higher than the 30 percent? A Oh, every breakdown on every item is going to be different. We can go to Body Kisses and figure it out. Q That's what I want to do because I want	Mercadante 180 A No. Sometimes I might say to him, I need it fast. Q And what does that mean, does that limit his sources or his outlets? A Probably so, yes. Q Have you had conversations with him, and say, hey I want you to buy it through distributor X? A No. Q Because it's going to be cheaper? A No. Q Why not? A I may ask him every once in awhile and say, Danny, can you do something with the price, ask if he can lower it because I'm not going to say, go to this guy, go to that guy because I don't know all the guys. Q The formula for all Australian Gold, Swedish Beauty and Caribbean Gold products is going to be the same, and that is, whatever distributor I'm sorry, whatever salon cost is to Mr. Sheehan or whomever else is supplying you, times 1.2 and now it's times 1.1 because you've loaned Mr. Sheehan \$7,500?
Mercadante 179 to understand A When I told you the 25, 30 percent on tanning lotion, I didn't that's everything. Q What do you mean, that's everything? A Well, we sell other tanning lotions, other than Australian Gold. Q That's a good point. What's your profit margin on Australian Gold tanning lotions? A Again, it varies. It does vary because sometimes our suppliers will buy things at 45 off. Sometimes 40. Sometimes 35 off. We always pay them 20 percent off. Q But for Crystal, you know you're getting that at 45 percent off salon cost?	1 Mercadante 181 2 A Correct. 3 Q So if I take another product and again, 4 do you have any records, which would show what 5 percentage discount Mr. Sheehan or another one of 6 your suppliers is getting? 7 A No. 8 Q So you can't tell me for sure on this 9 product, I know I only got it at 40 percent off 10 of salon? 11 A I couldn't say that every single time. 12 I mean, sometimes they're sales. 13 Q Do you ever get more of a discount than 14 45 percent off salon cost? 15 A No, not that I'm aware of. But there

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A If they were to buy it from that 16 distributor that's giving them the 45 percent 17 off. If they were to buy it from a distributor 18 that gave them 35 percent off, then it is what it 19 20 is.

Do you control where Mr. Sheehan buys? 21 Q 22

No.

Do you ask him, hey, only deal with this 23

distributor because he's going to give you a 24

25 better price, so it's more savings to me?

A No, not that I'm aware of. But there might have been, whatever the discount was, I'm not sure, but we've seen buy 9 get 3 free, buy 10, get 2 free, that type of stuff.

Our pricing structure as for what we sell it for is usually with Australian Gold products is -- this season we have it marked at 45 percent off of retail price.

That's the way we do it. Sometimes we might buy it for less. Sometimes --

So you may make more profit because of

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182 Mercadante what you bought it for, but your basic pricing structure is to take retail and multiply it by

1.55? A Yes. And that's what we sell it for. MR. MATTHEWS: Mark this as Exhibit 11. (Mercadante Exhibit 11, website printout, marked for identification, as of

Q I'm handing you Exhibit 11, which is another printout from your website from earlier this week. I think it's just a general page regarding tanning?

This is our tanning lotions page, correct.

This is a page, if I'm at your home page, I click on tanning lotions and this is what's displayed, it showed all your lotions that you carry, correct?

A Yes, sir.

this date.)

Q Lock at the language on page 4 of 5 of this exhibit.

A Okay.

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Who is the author of this language? It says, be a smart tanner, different lotions for

1 Mercadante 184 A As far as I know. I don't really have 2 much knowledge into that, that's why we hired 3 4 somebody else to do it.

Q So RFI Media put on this, be a smart tanner for different lotions for different tans?

Correct.

Q Who authored these paragraphs?

9 I have no idea.

O I take it, you didn't?

11 Α Yes.

> Q Did you review this language before it was put on?

A It was e-mailed to us to review beforehand. Larry or I both review it.

Q RFI e-mailed it to you to review?

Correct. Α

Q When did this language go up on your 18 website? 19

A We only started doing business with them for maybe 2 or 3 months.

So, what, December of '05, January of 22 Q 06? 23

More December '05, I would think. 24 Α

Was any of this language added because Q

Mercadante 183

different tans?

A We just started doing business with a search engine optimizer, who has been putting content onto our site.

Q What's the name of the search engine optimizer?

A The company RFI Media, Robert Frank Indian.

Are they associated with Overture? Q

Oh, no. No, they're a private company.

What is the nature of their business, what do they do?

13 A They just try to figure out ways on how 14 we can get better in-depth with the spidering 15

that we spoke of before. Q So the goal of this company is to make sure your website reaches the consumers that are 18 searching for information?

20 Yes.

21 Q About tanning lotions or any products that you sell? 22

A Correct. 23

Spider, again, searches the content of 24 the website; is that what you're saying? 25

Mercadante 185 1 of this lawsuit and issue about training that 2 3 Australian Gold?

A Absolutely it had nothing to do with that. As far as the training that Australian Gold does, I really have no opinion on that. It has nothing do with that.

This has everything to do with the 8 9 spidering that I was explaining to you before in 10 order for us to try to get away from the companies like Overture and the pay per clicks 11 because it's way too costly. 12

From what we're told from people who do this stuff for a living, content and spidering is much more effective.

Q How does being a smart tanner and people have different skin types, how does that plug into your website to more people, if you know?

A It's just information and having 19 information and new content posted on web pages 20 will help to get the spiders to see your site. 21

22 Q But you don't view this language here as 23 an attempt to train your consumers on tanning 24 lotions? 25

A Absolutely not. We never said that we

47 (Pages 182 to 185)

1	Mercadante 186	1	Mercadante 188
2	train anybody.	2	and its brands?
3	MR. MATTHEWS: Mark this as Exhibit 12.	3	A All trademarks and registered trademarks
4	(Mercadante Exhibit 12, website	4	are the property of their respective owners.
5	printout, marked for identification, as of	5	That goes for Australian Gold and anybody else.
6	this date.)	6	Q But you don't anywhere state what
7	Q I put Exhibit 12 in front of you.	7	trademarks Australian Gold owns?
8	Again, is this a true and accurate representation	8	A No. MR. MATTHEWS: Mark this as Exhibit 13.
9	of a portion of your website, THESUPPLENET.COM?	9	
10	A Yes, sir.	10	(Mercadante Exhibit 13, website printout, marked for identification, as of
11	Q The second page has a statement that	11	
12	says, tanning lotion disclaimer?	12	this date.)
13	A Yes.	13	Q Mr. Mercadante, I've handed you what's been marked as Exhibit 13.
14	Q Who authored that?	14	
15	A I don't really remember. I think it was	15	A Yes, sir. Q Is this a true and correct copy of S&L
16	a conglomerate of a few of us.	16	Q Is this a true and correct copy of S&L Vitamins' website with respect to the product
17	Q And who would that include?	17 18	Body Kisses?
18	A Myself, Larry, under the supervision of	19	A Correct.
19	our counsel.	20	Q And in this Exhibit 13, this would be
20	Q When was this disclaimer placed on your	21	the I think was a couple of exhibits back
21	website?	22	where you listed all your products, this is the
22	A I don't know. It's been there, I don't	23	specific page for specific products?
23	know.	24	A Yes. This is an item page.
24	Q Was there any certain event that triggered the placement of the disclaimer on your	25	Q What's it called, an item page?
25	riggered the placement of the disclaimer on your		
		1	
1	Mercadante 187	1	Mercadante 189
1 2	website?	2	A Item page, yes.
	website? A If anything, I would probably have to	2 3	A Item page, yes. Q Let's look at the last page here.
2 3 4	website? A If anything, I would probably have to say the initial cease and desist letter. We want	2 3 4	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph.
2 3 4 5	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated	2 3 4 5	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay.
2 3 4 5 6	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the	2 3 4 5 6	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L
2 3 4 5 6 7	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody.	2 3 4 5 6 7	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins?
2 3 4 5 6 7 8	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page,	2 3 4 5 6 7 8	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes.
2 3 4 5 6 7 8 9	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct?	2 3 4 5 6 7 8 9	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer
2 3 4 5 6 7 8 9	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page.	2 3 4 5 6 7 8 9	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin?
2 3 4 5 6 7 8 9 10	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the	2 3 4 5 6 7 8 9 10	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes.
2 3 4 5 6 7 8 9 10 11 12	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the full disclaimer text, correct?	2 3 4 5 6 7 8 9 10 11 12	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes. Q No one else has taken pictures of it,
2 3 4 5 6 7 8 9 10 11 12 13	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the full disclaimer text, correct? A That is correct.	2 3 4 5 6 7 8 9 10 11 12 13	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes. Q No one else has taken pictures of it, but Mr. Sagarin's friend for your website?
2 3 4 5 6 7 8 9 10 11 12 13 14	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the full disclaimer text, correct? A That is correct. Q It says, all trademarks or registered	2 3 4 5 6 7 8 9 10 11 12 13 14	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes. Q No one else has taken pictures of it, but Mr. Sagarin's friend for your website? A No.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the full disclaimer text, correct? A That is correct. Q It says, all trademarks or registered trademarks are the property of the respective	2 3 4 5 6 7 8 9 10 11 12 13 14 15	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes. Q No one else has taken pictures of it, but Mr. Sagarin's friend for your website? A No. Q Across the top, it says,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the full disclaimer text, correct? A That is correct. Q It says, all trademarks or registered trademarks are the property of the respective owners. What does that mean?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes. Q No one else has taken pictures of it, but Mr. Sagarin's friend for your website? A No. Q Across the top, it says, BODYSOURCEONLINE.COM and then there's a little
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the full disclaimer text, correct? A That is correct. Q It says, all trademarks or registered trademarks are the property of the respective owners. What does that mean? A I don't know.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes. Q No one else has taken pictures of it, but Mr. Sagarin's friend for your website? A No. Q Across the top, it says, BODYSOURCEONLINE.COM and then there's a little logo, it says, Body Source inside a triangle?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the full disclaimer text, correct? A That is correct. Q It says, all trademarks or registered trademarks are the property of the respective owners. What does that mean? A I don't know. Q Anywhere do you identify that Australian	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes. Q No one else has taken pictures of it, but Mr. Sagarin's friend for your website? A No. Q Across the top, it says, BODYSOURCEONLINE.COM and then there's a little logo, it says, Body Source inside a triangle? A Right.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the full disclaimer text, correct? A That is correct. Q It says, all trademarks or registered trademarks are the property of the respective owners. What does that mean? A I don't know. Q Anywhere do you identify that Australian Gold is the owner of the Australian Gold	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes. Q No one else has taken pictures of it, but Mr. Sagarin's friend for your website? A No. Q Across the top, it says, BODYSOURCEONLINE.COM and then there's a little logo, it says, Body Source inside a triangle? A Right. Q Who placed those over the picture?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the full disclaimer text, correct? A That is correct. Q It says, all trademarks or registered trademarks are the property of the respective owners. What does that mean? A I don't know. Q Anywhere do you identify that Australian Gold is the owner of the Australian Gold trademarks or the trademarks associated with	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes. Q No one else has taken pictures of it, but Mr. Sagarin's friend for your website? A No. Q Across the top, it says, BODYSOURCEONLINE.COM and then there's a little logo, it says, Body Source inside a triangle? A Right. Q Who placed those over the picture? A The photographer.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 20 21	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the full disclaimer text, correct? A That is correct. Q It says, all trademarks or registered trademarks are the property of the respective owners. What does that mean? A I don't know. Q Anywhere do you identify that Australian Gold is the owner of the Australian Gold trademarks or the trademarks associated with their products that you offer for sale?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes. Q No one else has taken pictures of it, but Mr. Sagarin's friend for your website? A No. Q Across the top, it says, BODYSOURCEONLINE.COM and then there's a little logo, it says, Body Source inside a triangle? A Right. Q Who placed those over the picture? A The photographer. Q Why are they placed over the picture,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	website? A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody. Q This doesn't appear on every page, correct? A Every single page. Q But you have to click on to read the full disclaimer text, correct? A That is correct. Q It says, all trademarks or registered trademarks are the property of the respective owners. What does that mean? A I don't know. Q Anywhere do you identify that Australian Gold is the owner of the Australian Gold trademarks or the trademarks associated with their products that you offer for sale? A I'm sorry, I don't understand.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A Item page, yes. Q Let's look at the last page here. There's an enlarged photograph. A Okay. Q Is that a photograph taken by S&L Vitamins? A Yes. Q And was this done by the photographer friend of Larry Sagarin? A Yes. Q No one else has taken pictures of it, but Mr. Sagarin's friend for your website? A No. Q Across the top, it says, BODYSOURCEONLINE.COM and then there's a little logo, it says, Body Source inside a triangle? A Right. Q Who placed those over the picture? A The photographer. Q Why are they placed over the picture, any reason?
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03/01/06

Steven Mercadante

1	Mercadante 190	1	Mercadante 192	
2	up there, we felt were popping up on competitors'		(Mercadante Exhibit 15, website	
3	websites. That's why we put a template on there	2 3	printout, marked for identification, as of	
4	to try and prevent that.	4	this date.)	
5	Q It says all rights reserved at the	5	Q Is Exhibit 15 a true and correct copy of	
6	bottom. What do you mean by that?	6	•	
7	A I don't know.	7	MR. COLEMAN: Go off the record for a	
8		8	second.	
9	•	9	(A discussion was held off the record.)	
	A The photographer.	10		
10	Q Have you ever requested Australian Gold		Q Exhibit 15, is that a true and correct representation of S&L Vitamins' website with	
11	for permission to sell any of its products on the	11	•	
12	Internet?	12	respect to the Caribbean Gold products it offers	
13	A No.	13	for sale?	
14	Q Do you believe you've ever received any	14	A Yes, it is.	
15	permission from Australian Gold to sell any of	15	Q I think you testified earlier, weren't	
16	its products on the Internet?	16	sure what you were doing with OVERTURE.COM right	
17	A No. We didn't feel that we needed	17	now?	
18	permission.	18	A Yes. I know that we're trying to get	
19	Q Do you contend that Australian Gold's	19	away from pay per clicks, I'm not sure if it's	
20	granted you any license to use any of its	20	active or not. I don't know.	
21	trademarks or copyrights?	21	MR. MATTHEWS: Mark this as Exhibit 16.	
22	MR. COLEMAN: Object to the form. You	22	(Mercadante Exhibit 16, website	
23	can answer.	23	printout, marked for identification, as of	
24	A Do I believe that they have, no, I	24	this date.)	
25	don't.	25	Q Before you is Exhibit 16. I typed in	
	dont		Q Boloto you to Extraord 10, 1 dypou in	
	10.1		Married and a 402	
1	Mercadante 191	1	Mercadante 193	
2	Q On page 2 of 3, there's a description of	2	the word Swedish Beauty on a search term with	
2	Q On page 2 of 3, there's a description of Body Kisses. Did you write that?	2	the word Swedish Beauty on a search term with OVERTURE.COM. Do you see your website on there	
2 3 4	Q On page 2 of 3, there's a description of Body Kisses. Did you write that? A That text was typed from what was on the	2 3 4	the word Swedish Beauty on a search term with OVERTURE.COM. Do you see your website on there anywhere, S&L Vitamins' website?	
2 3 4 5	Q On page 2 of 3, there's a description of Body Kisses. Did you write that? A That text was typed from what was on the bottle.	2 3 4 5	the word Swedish Beauty on a search term with OVERTURE.COM. Do you see your website on there anywhere, S&L Vitamins' website? A Amidst of many, yes, I do.	
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2 3 4 5 6	Q On page 2 of 3, there's a description of Body Kisses. Did you write that? A That text was typed from what was on the bottle. Q It wasn't taken out of any catalog?	2 3 4 5 6	the word Swedish Beauty on a search term with OVERTURE.COM. Do you see your website on there anywhere, S&L Vitamins' website? A Amidst of many, yes, I do. Q It's the fourth one listed; is that correct? A Yes.	
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	1	Mercadante 194	1	Mer
l	2	Q I'd have to ask Mr. Sagarin on that?	2	in the game, this
١	3	A Yes.	3	going because the
۱	4	MR. MATTHEWS: Mark this as Exhibit 17.	4	competition, may
İ	5	(Mercadante Exhibit 17, website	5	is Australian Gold
l	6	printout, marked for identification, as of	6	Q What abo
ļ	7	this date.)	7	A 10, 5.
I	8	Q You got Exhibit 17 before you and this	8	Q After Aust
1	9	is also an OVERTURE.COM website with the word	9	your next biggest
	10	Australian Gold typed in.	10	A No.
1	11	By the way, are you familiar with the	11	Q Is Australi
	12	search tools on Overture, how to search in to	12	seller of tanning
	13	type in key words or find out if anybody is	13	A It's close.
	14	bidding on those key words?	14	totally positive.
	15	A If I tried to, I could probably figure	15	Q Who wou
	16	it out, but it's not part of my job. I don't do	16	A I will not a

it out, but it's not part of my job. I don't do it.

- So you've never done that before? Q
- 19 Α No.

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- And it appears that THESUPPLENET.COM is 20 number 3 on the list? 21
 - A Again, among the midst of many.
 - Do you have an understanding on the ranking what that means? Do you know if that means you'll be number 3 on all sponsored search

1	Mercadante 196
2	in the game, this season right now, the way it's
3	going because there are just way so much more
4	competition, maybe 25 percent of all lotion sales
5	is Australian Gold. I'm going to guess.

- out Swedish Beauty?
- stralian Gold, is Swedish Beauty st seller?
- llian Gold your number one lotions?
- . It's close. I'm not
- uld be its closest competitor?
- I will not answer that. Α
- Why not? 17 0

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- Because we're in litigation with other 18 companies and I know you guys speak with each 19 20 other.
 - Q Well you're obligated to answer who your next closest --
- MR. COLEMAN: You have to answer. If 23 the other guys ask you at the other 24 deposition, then you'll answer them there. 25

Mercadante 195 1 2 results? 3

- A I would think that you would be number 3 under the term that you typed in.
- Q Your max bid on this is 40 cents, as Swedish Beauty and Exhibit 16 was 30 cents. Is there any reason why the bid is higher for Australian Gold?
 - A I don't know.
- Q Is Australian Gold a better seller than 10 Swedish Beauty? 11
- A Yes. 12
- What percentage of your tanning lotion 13 sales would you say are Australian Gold tanning 14 15 lotions?
 - A I'm sorry?
- I want to distinguish Australian Gold 17 versus Swedish Beauty at this time, but what 18 percentage would you say are Australian Gold? 19
 - A I don't know.
 - Can you give me a ballpark? Q
- 21 Is that necessary? A ballpark, I don't 22
- 23 know.
- MR. MATTHEWS: That's fair. 24
- A It could be far off, but at this point 25

197 Mercadante 1 Don't sweat that. We'll worry about that. 2 Designer Skin is a very good seller for 3 4 us.

- Q Is there anyone else other than Australian Gold, Swedish Beauty, Designer Skin that you would consider to be a big seller for you?
- 9 We don't really try to concentrate on only one manufacturer. We like to offer our 10 customers a wide variety of choices. And we like 11 to sell everything. We don't like to carry one 12 product and have it sit on the shelf. We want 13 everything to sell just as well. 14
- Q What would happen to your business if you could no longer carry Australian Gold and 16 Swedish Beauty tanning lotions?
- A I would say that we would certainly have 18 to redirect, refocus, I would think. Probably 19 would not leave the tanning lotion industry at 20 this point. 21

We built up a very good clientele of 22 customers who enjoy doing business with us, and 23 enjoy saving money with us as opposed to buying 24 it at salons and I think that there's a 25

	Steven Me		lante 03/01	./06
1	Mercadante 198	1	Mercadante 200	
2	difference between Australian Gold customer and	2	from Australian Gold?	
3	an Internet shopper.	3	A Correct.	
4	And if, for some reason, we do not carry	4	Q Who received that letter, was that you	
5	Australian Gold anymore in the future, we hope	5	or Larry Sagarin or someone else?	
6	that some of those customers will continue to buy	6	A I don't remember. It was sent to our	
7	something else. There's other lines.	7	store. I don't know who opened it. I don't	
8	Q Would this put you out of business if	8	know.	
9	you couldn't sell Australian Gold or Swedish	9	MR. MATTHEWS: Mark this as Exhibit 18.	
10	Beauty?	10	(Mercadante Exhibit 18, complaint,	
11	A It wouldn't make it fun.	11	marked for identification, as of this date.).	
12	Q But would it put you out of business?	12	Q But at some point in time, you did read	
13	A That would have to be a business	13	that cease and desist letter that was sent in	
14	decision at that time. It's not only Australian	14	2004?	
15	Gold that brings us to this table. It's the	15	A The cease and desist letter, absolutely,	
16	other people that we mentioned that we are in	16 17	I read that, yes. Q Exhibit 18 is the lawsuit that your	
17 18	litigation with, as well. So if we do lose a group of different	18	company S&L Vitamins filed against us, Australian	
19	manufactures, that would be close to putting us	19	Gold?	
20	out of business.	20	A It's almost a year ago today.	
21	Q So it's if everybody prevailed and the	21	Q I want you to look at the first exhibit	
22	court said you couldn't sell these tanning	22	to this complaint. I think it's a January 15,	
23	lotions, that's what would it's a combination	23	2004 letter to Body Source?	
24	of California Tan, Australian Gold?	24	A I'm sorry, where am I looking?	
25	A We've been in business for a very, very	25	Q The first exhibit to the complaint after	
1	Mercadante 199	1	Mercadante 201	
2	long time before we started selling tanning	2	the complaint ends, I'm not sure if that's	
3	lotion. We're not solely riding the tanning	3	Exhibit A or 1.	
4	lotion coattails, so to speak. We carry	4	A Okay.	
5	90-something brands.	5	Q It's Exhibit A. Is Exhibit A here, the	
6	Q Have you had any discussions about	6	January 15 letter, is that the initial cease and	
7	discontinuing tanning lotion sales?	7	desist letter that S&L Vitamins received?	
8	A No.	8	A I'm not sure.	
9	Q That's not in your immediate plans	9	Q Have you seen this letter before?	
10	anyway?	10	A It's not really telling me anything that	
11	A No.	11	I haven't heard so far.	
12	Q Have you ever seen a copy of Australian	12	Q Did you think there was a cease and	
13	Gold's distributor agreement?	13	desist letter sent before January 15, 2004 or do	
14	A No.	14	you think this is around the time you received	
15	Q Did you review the counterclaims that	15	word from Australian Gold that it objected to you	1
16	Australian Gold had filed?	16	selling the products on the Internet?	
17	A Somewhat, yes.	17	A I don't know.	
18	Q Did you read the exhibits that were	18	Q And just so the record is clear, you did	
19	included?	19	receive a copy of this January 15, 2004 letter,	
20	A I looked through them when they were	20	correct? A I'm sure that we received it. Whether I	
21	first issued. I don't remember the exact.	21 22	A I'm sure that we received it. Whether I read it upon receipt, I don't know. I am aware	, ,
22	Q But your testimony is, you had knowledge	23	of all the information that's on it right now	
23	that there were contracts in place and a	23	or all the information that's on it right now	

 $\,Q\,\,$ $\,$ And then the second exhibit is a letter

24 distribution system in place sometime in 2004

when you received the cease and desist letter

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24 though.

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1	Mercadante	202
2	from Mr. Coleman dated Janua	ry 27, but it
3	references another attorney, Je	effrey Levitt; are
4	you familiar with him?	

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If you're not, that's okay. THE WITNESS: Do you?

No, I don't.

MR. MATTHEWS: Mr. Coleman does, but he can't testify.

MR. COLEMAN: He doesn't let me answer the questions. Believe me, we would have done a long time ago.

MR. MATTHEWS: We would have been before the court.

- O Let's look at the allegations in the lawsuit. Paragraph 51 on page 11 of the complaint, go back into the actual complaint itself, page 11.
 - A 51, I said.
- O Yes. If it says, plaintiff has suffered and will continue to suffer economic harm from defendant's actions. What is the amount of economic harm that you have sustained?
 - A Only we would know. We've been unable

Mercadante 204 is, we will have a trial some day on this if the 2 case is not resolved in some other fashion. And 3 you're going to, I presume, put in a claim for 5 damages. And I'm entitled to know what damages 6 you contend that you sustained.

- Okay.
- So right now, you don't have a dollar Q amount of damages?
 - A I don't.
- When you say you were unable to grow, how has Australian Gold prevented S&L Vitamins from growing?

A We've been a little leery about trying to expand our business going into a bigger location. We haven't been able to even if we wanted to afford it due to the cost of this litigation. And that has definitely pinched our ability to grow without a doubt.

- Q How do you contend that Australian Gold has caused your sales to decrease?
- A We can't compete as much with our 22 competitors anymore. 23
 - How is that Australian Gold's fault? Q
 - We're here. I don't want to be here.

203 1 Mercadante to grow. I know that our sales from '04 and '05 2 have decreased. I do believe that it has also 3 put us in a position where we can't be as 4 5 aggressive with our competitors because we seem to be the only one of the competitors who have 6 legal fees on us. 7

O Anything else where you think you've sustained economic harm?

A I love Ron, we have to pay him a decent amount of money. From that point on, I can't think of much else right now, no. 12

- Q Can you put a dollar amount on the 13 amount of economic harm that you contend that you 14 have sustained? 15
 - No, I can't.
- Q Is there a reason why you can't or you haven't been able to, is it something you just 18 haven't been able to do or --19
- A I haven't been able to do it. I try not 20 to think about it because it gives me agita and 21 it will promote more harm other than economic if 22 23 I start adding it up. So I haven't gotten to 24 that point.
 - Q And the reason I'm asking Mr. Mercadante

205 Mercadante We're here because of Australian Gold. It's costing us money.

It's costing us legal fees that we have to factor into the pricing that we charge our customers that our competitors do not. We lose customers because of that. That, in turn, has made Australian Gold affect our business.

- Q I want to make sure I understand.
- A Off the top of my head, that's what I can think of. I'm sure if you give me a little bit of time, I can think of a lot more.
 - Q I want to make sure you're clear. You authorized Mr. Coleman to file this lawsuit on behalf of S&L Vitamins?
 - A Absolutely, I did.
- And Australian Gold had not filed suit 17 against your company at the time you had filed 18 suit against it, correct? 19
- A We believe that they certainly would 20 have. We had to do this to keep it in New York 21 because we would not be able to afford to defend 22 ourselves by going to Indianapolis. 23 24
 - Turn to the next page, please, 12. You've asked for your reasonable attorney fees

1	Mercadante 206	1	Mercadante 208
2	and costs in this litigation, correct?	2	Q So any economic harm that you're going
3	A Sure.	3	to present at trial for damages will not include
4	Q Is that still a claim you're making for	4	attorney fees?
5	attorneys' fees and costs?	5	MR. COLEMAN: Object to the question.
6	MR. COLEMAN: I object to the form. You	6	He's not qualified to answer that question.
7	can answer it.	7	MR, MATTHEWS: I want to make sure when
l		8	he's talked about, I'm unable to grow because
8		9	I've got to pay, I love Ron to death, I got
9	Q What amount of attorney fees are you	10	to pay money, I can't be aggressive, it
10	claiming in this litigation?		
11	A It's not over yet. I don't know.	11	sounds like he's claiming that's part of his
12	Q How much in attorney fees has S&L	12	damages.
13	Vitamins incurred to date?	13	And if he's going to present damage
14	A I'd have to say somewhere between	14	evidence of that at trial, then I'm entitled
15	\$50,000 and \$100,000. Somewhere between there.	15	to know your attorneys' fees. If he's not,
16	Q How much have you actually paid the	16	that's fine. If the damages are zero, like I
17	Coleman law firm?	17	said, that's fine. I want to make sure I
18	A About \$8,000 less of that.	18	understand.
19	Q So somewhere between \$42,000 and \$92,000	19	THE WITNESS: With all due respect, I
20	dollars?	20	don't want to commit to a number now if I am
21	A I told you, I can't be exact. What do	21	completely off the mark.
22	you want me to tell you?	22	MR. COLEMAN: It's not only that, this
23	Q Well, there's a big difference between	23	isn't the definitive opportunity, last clear
24	\$50,000 and \$100,000 and I would think on a	24	chance for him to come up with a damage
25	business who is tight on money?	25	calculation. It's a deposition. He knows
	bubilious viile is tigite on money.		
1	Mercadante 207	1	Mercadante 209
1 2	A I'm not going to sit here and tell you	2	his business fairly well. He's not an expert
3	that it's \$500,000. And I'm not going to sit	3	in economic losses in commercial cases or
		4	Landham cases.
4	here and tell you it's \$100,000. That's a	5	THE WITNESS: I also
5	ballpark. I told you, I don't know. That's a	6	MR. MATTHEWS: No question is pending.
6	ballpark figure that I can come up with.	1	·
7	RL* Q How much per hour is Mr. Coleman	7	Let the record reflect I slapped him on the
8	charging you for that time?	8	arm.
9	MR. COLEMAN: Hold on. He's not going	9	Q So today you don't have a dollar amount
10	to answer these questions. As you know,	10	of damages, correct?
11	Scott, the only way they get a fee is if they	11	A Yes, sir.
12	prevail on a Landham claim and then a fee	12	Q I wanted to ask you a couple of
13	application goes in on a Landham claim, which	13	questions about the interrogatories that your
14	is very far along.	14	attorney, I assume, helped you prepare to respond
15	If it comes to that, you'll have the	15	in this litigation. Do you remember having to
16	opportunity to at this point, you're	16	answer some questions under oath?
17	really picking on attorney-client privilege.	17	A Sure.
18	MR. MATTHEWS: So you're instructing him	18	Q Interrogatory number 4 talks about
19	not to answer. I think we've been pretty	19	physical locations from which you've conducted
20	good sports right up until this point.	20	business and you listed your 308 East Montauk
21	Q So you're refusing to answer the	21	Highway?
22	question on advice of counsel?	22	A That's right.
23	A Yes, sir.	23	Q And I believe we testified that was the
24	MR. MATTHEWS: Just certify that	24	only place where you've done business, but in a
25	question.	25	supplemental letter from your counsel, it
123	questioni	1-5	

1 Mercadante 210 2 mentions that you have shipped tanning lotions from 59 Cleveland Avenue, Bay Shore, New York 11706? 3 A Yes, we have. 6 Q What is at 59 Cleveland Avenue? 7 A That is the address that should be on the home page of Drills and Taps. Well, actually, that's his father's new address. They had moved. 11 His father's company does a lot of shipping. When we ship stuff out on a skid, we ship from there because they have a forklift. 50 It's less expensive for us to get it on a truck. 15 Q So that's the address. What's the name of Jarry Sagarin's father's company? 17 A I believe It's SAG Supply, S-A-G. 18 Q How often do you ship products on skids? 18 A I believe It's SAG Supply, S-A-G. 19 A Not often. We've done maybe five or six times. 21 Q Who are your customers that buys a skid full of tanning lotion? 23 A We have an overseas customer. Not 24 always tanning lotion. 25 Q Supplements and other things as well? 26 If Mercadante 211 2 A That's right. 3 Q What's the name of that overseas customer? 4 A No. 4 Do you have any ownership in with S&L Vitamins, Inc.? 5 A No. 6 Q Doos Mr. Devlin have any affiliation with S&L Vitamins, Inc.? 6 Q Doos Mr. Devlin have any affiliation with S&L Vitamins, Inc.? 8 A No. 9 Q Do you have any ownership in With S&L Vitamins, Inc.? 9 A No. 10 Q And Mr. Devlin have any affiliation with S&L Vitamins, Inc.? 1 A No. 1 C Q Are you aware of any legal action taken by any European distributor against Mr. Devlin? 1 A No. 2 Q Are you aware of any legal action taken by any European distributor against Mr. Devlin? 2 A No. 3 Q Have you had any conversations with the supplements and he changed his URL. Q Are you aware of any legal action taken by any European distributor against Mr. Devlin? 2 A No. 3 Q Have you had any conversations with Are No. 3 Q D Have you had any conversations with Are No. 3 Q D Have you had any conversations with Are Devlin concerning his sale of Australian Gold the word? 4 In the decided not the oat of the decider of the decider of the decider. He decided not the oaw	1 4				
2 mentions that you have shipped tanning lotions 3 from 59 Cleveland Avenue, Bay Shore, New York 4 11706? 5 A Yes, we have. 6 Q What is at 59 Cleveland Avenue? 7 A That is the address that should be on 8 the home page of Drills and Taps. Well, 9 actually, that's his father's company does a lot of 11 His father's company does a lot of 12 shipping. When we ship stuff out on a skid, we 13 ship from there because they have a forklift. So 14 it's less expensive for us to get it on a truck. 15 Q So that's the address. What's the name 16 of Larry Sagarin's father's company? 7 A I believe it's SAG Supply, S-A-G. 18 Q How often do you ship products on skids? 9 A Not often. We've done maybe five or six 10 times. 11 Mercadante 211 2 A That's right. 3 Q What's been and often things as well? 11 Mercadante 211 2 A That's right. 3 Q What's set hame of that overseas 4 customer? 5 A Michael Devlin. 6 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership in 1 Mr. Devlin's company? 11 A No. 9 Q Do you have any ownership	1 1	Mercadante 210	1		
3		mentions that you have shipped tanning lotions			,
5 A That he got a letter, a cease and desist felter. He decided not to do any more business, sick and tirred of the entire tanning industry and wants to get into supplements. Okay. That's highly fixed	3	from 59 Cleveland Avenue, Bay Shore, New York	3	· ·	k
6 Q What is at 59 Cleveland Avenue? 7 A That is the address that should be on the home page of Drills and Taps. Well, a stually, that's his father's new address. They land moved. 11 His father's company does a lot of 21 shipping. When we ship stuff out on a skid, we ship from there because they have a forklift. So 14 It's less expensive for us to get it on a truck. So that's the address. What's the name 16 of Larry Sagarin's father's company? 17 A I believe it's SAG Supply, S-A-G. 18 Q How often do you ship products on skids? 18 A Not often. We've done maybe five or six to times. 19 A We have an overseas customer. Not 24 always tanning lotion? 21 A We have an overseas customer. Not 24 always tanning lotion? 22 A A That's right. 3 Q What's the name of that overseas customer? 25 A Michael Devlin. 6 Q Does Mr. Devlin have any affiliation with S&L Vitamins, Inc.? 8 A No. Q Do you have any ownership in 10 Mr. Devlin's company? 11 A No. 20 Q And Mr. Devlin's company is Body Source 13 UK Limited? 14 Living A No. Q Living from there became that busy as a skid times. 15 website now. 15 Living from there because they have a forklift. So letter, He decided not to do any more business, sick and tired of the entire tanning industry and wants to get into supplements. Okay. That's wants to get into supplements. All fill in the UK? 12 Hid that much. Up until recently. He started getting more involved with the supplements. The fill in the much. Up until recently. He started getting more involved with the supplements and other things as kid? 15 Changing over involved with the supplements and other things as kid? 16 In much. I believe he con	4	11706?			
6 Q What is at 59 Cleveland Avenue? 7 A That is the address that should be on the home page of Drills and Taps. Well, 9 actually, that's his father's new address. They had moved. 11 His father's company does a lot of shipping. When we ship stuff out on a skid, we ship from there because they have a forklift. So like it's less expensive for us to get it on a truck. 12 Q So that's the address. What's the name of Larry Sagarin's father's company? 13 A I believe it's SAG Supply, S-A-G. 14 Q Who are your customers that buys a skid full of tanning lotion? 15 Q Supplements and other things as well? 16 Q What's the name of that overseas customer? 17 A I believe it's SAG Supply, S-A-G. 18 Q What's the name of that overseas of a laways tanning lotion. 18 A That's right. 19 Q What's the name of that overseas customer? 21 A That's right. 22 Q What's the name of that overseas customer? 23 A Wichael Devlin. 24 A That's right. 25 Q Supplements and other things as well? 26 A Michael Devlin. 27 A Do yo u have any ownership in 10 Mr. Devlin's company? 28 A No. 29 Q Do you have any ownership in 10 Mr. Devlin's company? 11 A No. 21 Q And Mr. Devlin's company? 12 A I believe that's what he calls his 15 website now. 24 A No. 25 Q So he just contacted you out of the blue? 26 A Most often be often arming industry and wants to get into supplements. Okay. That's whet he uk? 26 A I didn't really deal with Mir. Devlin alt that much. Up until recently. He started getting more involved with the supplyements. 26 Changing over his website. 27 A I didn't really deal with Mir. Devlin alt that much. Up until recently. He started getting more involved with the supplyements. 28 Changing over his website. 29 G What's the name of the sir with much. I believe he contacted us. I don't much. I believe he contac	5	A Yes, we have.	5	A That he got a letter, a cease and desist	
the home page of Drills and Taps. Well, actually, that's his father's new address. They had moved. this father's company does a lot of shipping. When we ship stuff out on a skid, we ship from there because they have a forklift. So it's less expensive for us to get it on a truck. Q So that's the address. What's the name of Larry Sagarin's father's company? A I believe it's SAG Supply, S-A-G. Roy How often do you ship products on skids? A Not often. We've done maybe five or six times. Q Who are your customers that buys a skid full of tanning lotion? A We have an overseas customer. Not always tanning lotion. Q Supplements and other things as well? Mr. Devlin scompany? A No. Q Does Mr. Devlin have any affiliation with S&L Vitamins, Inc.? A No. Q Does Mr. Devlin have any affiliation with S&L Vitamins, Inc.? A No. Q Does Mr. Devlin's company? A I believe that's what he calls his website now. Q Day ou have any ownership in the supplements and he changed his URL. Q Are you aware of any legal action taken by Mr. Devlin concerning his sale of Australian Gold A Mr. Devlin concerning his sale of Australian Gold A May that's the reamder ship stuff out on a skid, we any prior relationship with Mr. Devlin before Mr. Devlin contacted you out of the blue? A No. Q What's the name of that overseas A Wichael Devlin. Q Does Mr. Devlin have any affiliation with S&L Vitamins, Inc.? A No. Q Do you have any ownership in Mr. Devlin's company? A I believe have an overseas customer. A No. Q Do you have any ownership in Mr. Devlin's company? A No. Q Do you have any ownership in Mr. Devlin's company? A I devent on the burn, I bevelin and the time, A Wast's the name of that overseas A We have the entire annal device the watto get with the supplements. Okay. That's Want led of the thit's UR? A I didn't really deal with Mr. Devlin and the time, I was email or phone. A Ne. Q What's the entire of relieve he contacted us. I don't know if it was email or phone. A No. Q What's the entire of relieve he contacted vou offere Mr. Devlin contact			6	letter. He decided not to do any more business,	
8 the home page of Drills and Taps. Well, 9 actually, that's his father's new address. They 11 had mowed. 12 his father's company does a lot of 13 shipping. When we ship stuff out on a skid, we 13 ship from there because they have a forklift. So 14 lit's less expensive for us to get it on a truck. 15 Q So that's the address. What's the name 16 of Larry Sagarin's father's company? 17 A I believe it's SAG Supply, S-A-G. 18 Q How often do you ship products on skids? 19 A No toften. We've done maybe five or six 20 times. 21 Q Who are your customers that buys a skid 21 full of tanning lotion. 22 A We have an overseas customer. Not 23 A We have an overseas customer. Not 24 always tanning lotion. 25 Q Supplements and other things as well? 26 A That's right. 27 A That's right. 28 A No. 29 Q Do you have any ownership in 29 A No. 20 Q Do you have any ownership in 20 Mr. Devlin's company? 21 A No. 22 Q And Mr. Devlin's company? 23 A No. 24 Q Supplements and other things as well, 25 A No. 26 Q Is his sits something like 27 SUNESSENTIALSUK.COM or something? 28 A It was. He's trying to get more into 29 the supplements and he changed his URL. 20 Q Are you aware of any legal action taken 21 by any European distributor against Mr. Devlin? 22 A No. 23 Q Have you had any conversations with 24 Mr. Devlin concarded with Mr. Devlin have any supplements. 3 What's the name of that overseas 3 Ust Limited? 4 A Ibelieve that's what he calls his 4 Webste now. 4 A Ibelieve that's what he calls his 5 where we are. 5 A Rot didn't really deal with Mr. Devlin alt that much. Up until recently. He started 4 It didn't really deal with Mir. Devlin and that much up a l			7		
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	Steven Me		•
1	Mercadante 214	1	Mercadante 216
1 2	_	2	joining partnerships or going into business with
L .		3	each other. We saw him as somebody on the other
3	documents and I want you to look through these	4	side of the world who wanted to do business and
4	and tell me which pages you can identify or you	5	we'd be willing to sell to him.
5	recognize as belonging to S&L Vitamins.	6	Q What was his name before Body Source UK
6	A I recognize two pages.	7	Limited?
7	Q Which?	-	A I think it was Sun Essentials.
8	A The two Source Pharmaceutical pages.	8	
9	Q That would be the third and fourth page	9	Q Did Mr. Devlin inform you that he was
10	of the exhibit; is that correct?	10	changing his name to Body Source or was he
11	A Yes.	11	instructed or advised by you to change his name
12	Q And the Source Pharmaceuticals	12	to Body Source?
13	identified on this invoice, S&L Vitamins doing	13	A I didn't instruct or advise him anything
14	business as Source Pharmaceuticals?	14	on that. Whether or not him and Larry had that
15	A That is, yes.	15	conversation, I don't know.
16	Q Do these two invoices in Exhibit 19	16	Q Do you have any understanding or reason
17	reflect sales made by S&L Vitamins to Body Source	17	why Larry and he might have a conversation about
18	UK Limited?	18	him changing his name?
19	A Yes.	19	A No. Familiarity, I guess. I don't
20	Q I apologize if I asked you this, do you	20	know.
21	know if Mr. Sagarin has an ownership in Body	21	Q That's why I was asking about synergies
22	Source UK Limited?	22	of the company, if there was some benefit to
23	A He definitely does not.	23	having someone in New York and someone in the UK
24	Q Do you have any explanation as to why	24	using the same name?
25	this company in the UK that does business as Body	25	A I don't personally see the aggravation.
1	Mercadante 215	1	Mercadante 217
2	Source contacted a company in New York that was	2	You're not talking about a \$100 million company
3	Body Source?	3	over here with us where it's going to be
4	A That was not the situation. I think he	4	necessary for us to open another warehouse on the
5	changed his name to Body UK after.	5	other side of the world, which would be more of a
6	Q Why?	6	hassle than anything else.
7	A I don't know.	7	But if the guy wants to buy a product
8	Q Did you guys have a conversation about,	8	from us, then I have no problem selling it to
9	you ought to change your name to match ours?	9	him.
10	A Not me.	10	Q How many transactions did S&L Vitamins
111	Q Did Mr. Sagarin have conversations with	11	have with Mr. Devlin?
12	him about partnering with Mr. Devlin to expand	12	A I'm not really sure, four or five, six
13	your business in the UK?	13	maybe.
1		14	Q I've got a transaction here, one that
14	A I don't think so. Not a partnership. He wanted to sell stuff.	15	looks like it was well, I can't tell. I need
15		16	you to tell me how much these invoices are. This
16		17	may be the same invoice.
17	A Absolutely. No partnership.	18	A I think it's the same invoice.
18	Q Did you talk about or did Mr. Sagarin or	19	Q And the pages may be reversed actually,
19	someone on behalf of S&L Vitamins have	i	the third page is actually the fourth, but that
20	conversations with Mr. Devlin or his	20	looks like about \$8,000 and some change; is that
21	representatives about combining your synergies	21	•
22		22	

23

24

25

States on the Internet and then overseas in UK?

certainly no plan as far as I know of, as far as

A Not that I know of. I mean, there was

23

24

A Yes. It looks like to me.

25 transactions of a similar amount?

Q Were the other transactions four or five

1	Mercadante 218	1	Mercadante 220
2	A I can't really remember. I mean, there	2	Notwithstanding this objection,
3	was nothing that was overly large in comparison	3	plaintiffs state that they have no relationship
4	to that. I really don't remember.	4	with any person or entity related to the sale of
5	Q Has Mr. Devlin communicated to you any	5	products in foreign markets.
6	terms of a settlement that he's reached with the	6	And that statement, to me, seemed
7	company in the UK?	7	contradictory to what you testified about selling
8	A He's told me that he decided on his own	8	to Body Source UK Limited?
و ا	to stop selling it. As far as legal actions go,	9	A As far as I know, we never denied
10	I don't know.	10	selling to Mike Devlin.
11	Q Did he talk to you about any agreement	11	Q That's what I want to get at because
12	he was signing with the UK person over there?	12	this to me sounded like a denial. So you're
13	A I think I did speak to him, I don't know	13	telling me, to the extent I've interpreted your
14	when it was, maybe 2 weeks ago, he said he was	14	answer to interrogatory number 11 is stating, you
15	waiting on something to come in the mail to say	15	have no relationship with any person related to
16	he was not going to sell any more. It didn't	16	the sale in foreign markets, you admit that you
17	show up.	17	sold to Mike Devlin and Body Source UK?
18	O What was the purpose of speaking with	18	A Absolutely.
19	him 2 weeks ago?	19	Q Is there any other foreign entity to
20	A Well, he's still doing the	20	whom S&L Vitamins has sold Australian Gold,
21	BODYSOURCEONLINE.com, which is geared towards	21	Swedish Beauty or Caribbean Gold tanning lotions?
22	sports supplements.	22	A We had one sale to a gentleman named
23	Q So you still have a relationship?	23	Phil Peperdi.
24	A Yes. We still have a relationship.	24	Q How do you spell his last name?
25	We're still doing business with him.	25	A I don't know.
1 -5		l	

1	Mercadante 219	1	Mercadante 221
2	Q I asked you a question in the	2	Q Say it again.
3	interrogatories about the photographs that you	3	A Phil Peperdi.
4	had taken. And the response I had received was,	4	Q Where is he located?
5	plaintiff had hired a photographer to take	5	A England. Somewhere in England.
6	digital photographs of products owned by	6	Q What did he purchase?
7	plaintiff. The use of these photographs was	7	A Some Velocity packets. He fell off the
8	authorized to the extent necessary.	8	face of the earth. I don't know what happened to
9	I was wondering what the sentence meant,	9	him.
10	the use of these photographs was authorized to	10	Q Did you actually complete that
11	the extent necessary?	11	transaction?
12	MR. COLEMAN: I'll object to the form.	12	A We tried. We were actually short a
13	If you can answer, you can give him an	13	little bit on it and we tried to contact him to
14	answer.	14	give him a credit because it was paid for in
15	A I can't answer.	15	advance. E-mails, certified letters, everything,
16	Q Did you prepare that answer?	16	phone calls and no answer.
17	A No.	17	We found out 30 days after we had
18	Q I asked you another interrogatory answer	18	thought that he received the product, that it was
19	about any relationship that S&L Vitamins had	19	still setting in Heathrow Airport. So I don't
20	related to the sale of products in the foreign	20	know if maybe Australian Gold knows more about it
21	market.	21	than I do. I don't know.
22	And it was interrogatory number 11 and	22	Q Just for the record, Velocity is an
23	the response was that you objected to the	23	Australian Gold product?
24	interrogatory as vague, the definition of	24	A Yes.
25	relationship is unclear.	25	Q When you're talking about package,
ı		<u> </u>	

	Steven rie	.ı cuu	ante 05/01/00
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	you're talking about one individual use packets? A Yes. Q How many Velocity packets did he order? A I don't quite remember. I didn't deal with Phil either. Q Was it a small amount or was it a large amount? A No. It was a strangely, a large amount of that item. Q How long ago it did this take place? A I couldn't tell you. I think it was 2005, but I'm not really sure. Q Did you generate an invoice for that? A Probably. Q Do you still have a copy of that invoice? A No. Q Do you keep your invoices that you send to your customers, invoices that you send to a person that buys one bottle of lotion off the Internet or a person that buys	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Mercadante 224 and Caribbean Gold, I didn't see that on here? A It wasn't requested either. Q I think it was. A No, it wasn't. We were requested for Australian Gold sales only. Q I think we defined product as any Australian Gold, Swedish Beauty or Caribbean Gold products, but regardless, Australian Gold manufactures all three brand names. Is that information you can get us? A Possibly. Q I mean, I can argue with your lawyers over whether or not that was included in the request, but A Yes. I'm pretty sure we can get that for you. That's no problem. It's going to look exactly the same like this with a lot of blackouts. And obviously different dates. Q If I wanted to know what percentage of your business with Australian Gold, Swedish Beauty tanning lotions, this merchant report would tell me, correct?
	, ,	23 24	A Yes.
24 25	backed up from the Yahoo server. MR, MATTHEWS: Mark this as Exhibit 20.	25	Q So I could add that up and figure that
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Mercadante 223 (Mercadante Exhibit 20, printout of sales, marked for identification, as of this date.) Q In Mercadante, would you identify what Exhibit 20 is. A This is a computer printout of all of our Australian Gold sales for 365 days. I assume from January 13, '06 back to January 14 of '05. Q Who printed out this report? A It might have been me. It might have been Larry. Q And this was produced in response to one of our requests for documents in this litigation? A That's correct. Q There have been certain products redacted. What are the redacted products? A Redacted means blacked out? Q Yes, why are there products redacted?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Mercadante 225 out? A Probably. Q As you're sitting here today, you can't tell me what percentage of your business Australian Gold is? A No. Because we have a storefront also. This is Internet sales. Q I understand. But what percentage of your sales of tanning lotions is through the Internet versus in your store? A We don't sell I could count on one hand how many bottles we sell inside the store. The storefront is sports nutrition. Q So 99.9 percent of your sales of tanning lotions are going to be on the Internet? A That's right. Q But if I wanted to know what percentage of tanning lotion sales was Australian Gold, this
20	A Because they're not Australian Gold products.	20 21	Yahoo Small Business Merchant Solutions report would tell me?
22	Q And why did you redact it, you didn't	22	A Probably would, yes.
23 24 25	want us to have that information? A You didn't request it. Q Where is the report for Swedish Beauty	23 24 25	Q But today, you can't tell me what percentage of tanning lotion sales are Australian Gold?

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Mercadante 226 A Right. Q Does every item that's sold through your Internet website get reported on this Yahoo Small Business Merchant Solution? A I believe so. Q Is there any way to clear it or reset it? A How do you mean reset it? Q I don't know. I just wanted to know if there's a way that if I click on a product to purchase on a website, that it's going to go here or if there's any way that this would be inaccurate or incorrect? A Well, obviously if I was to do the same printout, obviously numbers will change because it's R Q It's ongoing? A Right. Q Okay.	1 Mercadante 228 2 says, Internet and website costs \$3,910.05. I'm 3 just trying to understand what you spent on 4 Internet advertising, if that was the Internet 5 costs for the \$39,000 and if the \$49,000 figure 6 was newspaper or TV or radio or what? 7 A No. The Internet and website costs are 8 just Yahoo's fees for hosting our website. We 9 call it the VIG. I think they take 3 percent or 10 something like that of total sales. That would 11 be the cost of the Internet and website costs. 12 The advertising would include the pay 13 per clicks and that type of stuff which that's 14 the reason why we're trying to shy away from it 15 this year. 16 Q Under cost of goods sold, it says 17 freight in, what is that \$171,158.30 figure 18 represent? 19 A I don't know. I'd have to ask my 20 accountant.
17 it's	17 freight in, what is that \$171,158.30 figure
19 A Right.	19 A I don't know. I'd have to ask my
Q But this isn't a report you could manipulate, in other words, and go in and type in 5 696 items of Australian Gold Dark Tanning	23 A Yes. 24 Q So shipping is tacked on at the end of 25 the sale?

		_
1	Mercadante 227	
2	Accelerator?	
3	A No.	
4	Q You hit a button and the report is	
5	generated by Yahoo?	
6	A That's it.	
7	MR. MATTHEWS: Mark this as Exhibit 21.	
8	(Mercadante Exhibit 21, statement of	
9	income, marked for identification, as of this	
10	date.)	
11	Q Can you identify Exhibit 21, please?	
12	A From the header, S&L Vitamins, statement	
13	of income loss and retained earnings for the	
14	period ending September 30, 2005.	
15	Q Is that when your fiscal year ends,	
16	September 30?	
17	A You'd have to ask my accountant that. I	
18	don't know.	
19	Q Did your accountant prepare this report?	
20	A Yes.	
21	Q I want to look at some of your expenses.	
22	It says you spent \$49,080.12 in advertising for	
23	the period ending September 30, 2005?	
24	A It's possible.	
25	Q And then I've got at the very bottom it	
200000		0000

1	Mercadante 229
2	A Yes. They figure it out for me.
2	Q And I know tanning lotions is only a
4	portion of your business; does other product get
5	shipped in by UPS or Fed Ex or other carriers for
6	which you pay money?
7	A Not usually. Sometimes.
8	Q The \$171,000 is an awfully lot of money
9	for a freight in expense and I'm just not sure
10	what that means.
11	A \$6 per order, we charge each customer.
12	Q But you're passing that cost on to the
13	customer, so it's really not a cost to you?
14	A Well, we have to pay it.
15	Q So it's added to your revenue, all
16	right. But that's something your accountant
17	would know perhaps?
18	A Yes. That also would include those
19	couple of skids that we shipped out of that Deer
20	Park or Bay Shore.
21	Q Close to the bottom it says,
22	
23	
24	A This, again, I have no idea. These type

of questions you have to ask my accountant.

Mercadante 230 Q I assume you're a shareholder, so it's to you and Ms. Fanning or you and Mr. Sagarin? A Well, no. Mr. Sagarin gets - car expenses are included. Thusurances are included. Q Is it your testimony that you're living off of \$2,200 a year? A No. Q Is it your testimony that you're living off of \$2,200 a year? A No. Q What type of salary have you drawn from the company, are you drawing? A I did a couple of years ago. \$40,000. Last year I got a check after taxes for \$610 a week. I get some car expensess. This year, I had to take a little bit of a pay cut for myself, I get some car expensess. This year, I had to take a little bit of a pay cut for myself, I am getting medical insurance. Q So you didn't get a periodic distribution from the company or you didn't, you or Mr. Sagarin or Ms. Fanning didn't get, to your or Mr. Sagarin or Ms. Fanning didn't get, to your and the company or you didn't, you are larely don't know. I mean, I know I get a periodic distribution from the company or you didn't, you or Mr. Sagarin or Ms. Fanning didn't get, to your and the products of the products? A I tall do take altitle bit of a pay cut for myself, I get some car expenses. This year, I had to take altitle bit of a pay cut for myself, I get some car expenses. The year of the products? A Ckay. Roy You didn't get a periodic distribution from the company or you didn't, you are approved a really don't know. I mean, I know I get \$4,0,000? A I think so. I think that's what \$610, Mercadante 231 Yes. Q You didn't receive any bonus or any of the form of compensation other than the benefits you mentioned, the car expense? A Right. Q I would you agree with me that products included any dustrainan Gold, Caribbana G	•			
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1	Mercadante 234	1	Mercadante 236
1 2	Q I think that's taxes, if I read it	2	Australian Gold is claiming. We what we are
3	right, wages are one, below it is tax. I don't	3	claiming is we have, we are not bound by those
	know. It's not my document. That's how I	4	contracts whatsoever. We never signed anything.
4	interpreted it.	5	We never did business with anybody who was
5		6	involved with these contracts.
6	a a la	7	Q All right. As O, that's fine. Thanks.
7	Q Give or take, you know, a few hundred dollars or a few thousand dollars, do you believe	8	MR. MATTHEWS: Mark this as Exhibit 25.
8		9	(Mercadante Exhibit 25, checks, marked
9	that you received that this amount looks	10	for identification, as of this date.)
10	correct?	11	Q Mr. Mercadante, Exhibit 25, are these
11	A Yes.	12	checks written by S&L Vitamins, Inc.?
12	Q And the only two persons who received	13	A Yes, they are.
13	wages in 2005 from S&L Vitamins were you and	14	Q Do you know what these checks represent
14	Michael Neirman?	15	as far as what their purpose was for?
15	A That's correct.	16	A Yes.
16	MR. MATTHEWS: Mark this as Exhibit 24.	17	6.1
17	(Mercadante Exhibit 24, distributorship	18	Q What was the purpose of these checks? A Payment for tanning lotion.
18	contract, marked for identification, as of	19	Q Are these all of the checks that S&L
19	this date.)	1	Vitamins has with respect to payment of tanning
20	Q I handed you Exhibit 24. Have you seen	20	
21	this document before?	21	lotions?
22	A Not that I recall.	22	A These were all the checks they was able
23	Q This is Australian Gold's	23	to find, yes.
24	distributorship contract. Back when the initial	24	Q You testified earlier that you're
25	cease and desist letters came, there were some	25	currently with Bank of America?
	Mercadante 235	1	Mercadante 237

1	Mercadante 235	
2	reference to the letters that we're providing you	
3	with a copy of the contract.	
4	Do you remember getting a copy of that	

contract either directly through me or your counsel? A I remember hearing of the contracts. I

don't remember receiving them or reading them. I know of them.

Q Do you know of their contents regarding the restriction on sale of products?

A I'm pretty certain it's got nothing to do with me, but --

Q Has Mr. Sagarin received this contract, do you know?

A I don't know.

Q I assume you don't know if he's read it or not either?

A I don't.

Q Do you understand that Australian Gold is alleging in this lawsuit and it's

counterclaims that your company has interfered 22

with its contracts and it's a distribution 23

24 scheme?

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A I absolutely understand that that's what

Right.

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Q Is Apple Bank a different bank or is that a bank that was bought by --

No. Apple Bank was our original bank 5 when we first opened up. The reason for that was 6 because they were closest. They were right 7 8 across the street.

But as things went on -- they're a savings bank. They're not really helpful and they don't have the products that hopefully a growing business needs.

Q So you decided to --

So we switched to Bank of America last year.

Closed all your accounts out with Apple 16 Q Bank? 17

Yes. Α

This is going to be hard to do because 19 it's so thick, but if you can turn back about 20 halfway through, it's check 3902, and that's a 21 check to Yucan Greenvale? 22

A I haven't found it yet, but what's the 23 question. 24

There's a memo line in there that I want

03/01/06

Steven Mercadante

238 1 Mercadante 240 Mercadante 1 2 ACKNOWLEDGEMENT to ask you about. In the memo line, it says 3 STATE OF NEW YORK) Future Industries NV number 123462. Do you know 3 4 COUNTY OF NEW YORK) 4 what that is a reference to? 5 5 A I don't know. I didn't sign the check. I, STEVEN MERCADANTE, hereby certify, I have 6 Q Are you familiar with Future Industries? 6 read the transcript of my testimony taken under 7 7 A I know that they are a distributor, yes. oath in my deposition of March 1, 2006; that the 8 O Do you know if Yucatan had purchased 8 transcript is a true, complete and correct record 9 tanning lotions on your behalf from Future 9 of what was asked, answered and said during this 10 Industries? 10 deposition, and that the answers on the record as 11 A I know that Yucatan probably did 11 given by me are true and correct. 12 purchase from Future Industries and we paid 12 13 13 Yucatan. 14 O I understand. Why would there be a 15 14 STEVEN MERCADANTE reference to the invoices, is that just 15 16 16 showing --Subscribed and sworn to before me 17 17 A I don't know. Like I told you before, , 2006. 18 this _____ day of _____ we get the invoices to check in our order. To 18 19 figure out what their commissions are and write 19 **NOTARY PUBLIC** the check out and then we give them the check 20 20 with the invoice. 21 21 Maybe there was another invoice, another 22 22 23 payment that was lying around, so in order to not 23 24 have any confusion, Larry wrote that in there, I 24 quess. I have no idea. That's 2 years ago, 25 25 241 Mercadante 239 1 Mercadante 1 2 CERTIFICATE almost, today. As well, not signed by me. I 2 3 3 have no idea. 4 STATE OF NEW YORK) 4 MR. MATTHEWS: I have no further 5 COUNTY OF NEW YORK) 5 questions. 6 6 (Time noted: 4:10 p.m.) 7 I, MICHELE ROSSI, a Registered Professional 7 8 Reporter and Notary Public within and for the 8 9 State of New York, do hereby certify: 9 That, STEVEN MERCADANTE, the witness whose 10 10 deposition is hereinbefore set forth, was duly 11 11 sworn by me and that such deposition is a true 12 12 record of the testimony given by said witness. 13 13 I further certify that I am not related to 14 14 any of the parties to this action by blood or 15 15 marriage and that I am in no way interested in 16 16 the outcome of this matter. 17 17 In witness, whereof, I have hereunto set my 18 18 hand this 7th day of March, 2006. 19 19 20 20 21 21 MICHELE ROSSI, R.P.R. 22 22 23 23 24 24 25 25

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